141.

SUPREME COURT OF THE UNITED STATES.

No. 60.

LESSEE OF JOHN MERCER & MARY SCOTT HIS WIFE, PLAINTIFF IN ERROR,

VS.

WILSON CARY SELDEN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF VIRGINIA.

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S. D. Langtree, Print.

Pleas at the City Hall in the City of Richmond, before the Court of the United States, for the fifth Circuit and Eastern District of Virginia, on Tuesday the twenty-sixth day of May, 1840.

Be it remembered, that heretofore, to wit: At a court of the United States for the 5th Circuit and Eastern District of Virginia, held at the city hall in the city of Richmond on the 22nd day of November, 1837, came John Den by Walter Jones, Esq. his attorney, and filed his declaration against Richard Fen, of a plea of trespass and ejectment; which declaration and the note and affidavit thereunder written are in the words following:

Declaration.

COMMONWEALTH OF VIRGINIA,
County of Loudon, to wit:

John Den, a citizen of the State of Maryland, complains of Richard Fen, a citizen of the Commonwealth of Virginia; for that, whereas, John Mercer, a citizen of the State of Maryland, and Mary Scott, his wife, on the first day of October in the year 1837, at the county of Loudon aforesaid, had demised, granted and to farm let, to the said John Den, two undivided fifth parts of two undivided third parts, and one other undivided fifth part of two other undivided fifth parts of one other undivided third part of one messuage, one barn, two stables, eight hundred acres of arable land, two hundred acres of woodland and one hundred acres of meadow land, with the appurtenances, situate, lying and being in the county aforesaid. To have and to hold the said premisses with the appurtenances, from the said first day of October in the year aforesaid, for and during, and to the full end and time of ten years thence next following, and fully to be compleat and ended. By virtue of which said demise, he the said John Den entered into the said premisses with the appurtenances, and was possessed thereof until the said Richard Fen, afterwards, to wit: on the third day of October in the year aforesaid, with force and arms, at the county aforesaid, entered *entered* on the premisses aforesaid, with the appurtenances, in the possession of the said John Den, and then and there ejected, drove out and amoved the said John Den from his said farm, his said term therein not being ended, and him the said John Den so ejected, drove out and amoved, hath kept out, and still doth keep out from his possession thereof, and other injuries to him the said John Den, then and there did to the great damage of him the said John Den, and against the peace and government of the United States.—Whereupon the said John Den saith he is injured and hath sus-

tained damage to the value of five thousand dollars, and thereupon he brings suit, &c.

JONES, *for the Plff.*

Pledges, &c.

JOHN DOE,
R. ROE.

Note.

To WILSON C. SELDEN, ESQ.

I am informed that you are a citizen of the Commonwealth of Virginia, and a resident of the county of Loudon in the said commonwealth, and that you are in possession of, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector, and having no claim or title to the same premisses, do advise you to appear at the next Circuit Court of the United States, to be held for the eastern district of Virginia at the city of Richmond, on the 22d day of November next, by some attorney of that court, and then and there, by a rule of said court, to cause yourself to be made a defendant in my stead, otherwise I shall suffer judgment to be rendered against me, and you will be turned out of possession.

Your loving friend,
RICHARD FEN.

Affidavit.

COMMONWEALTH OF VIRGINIA,
County of Loudon, to wit:

Jared Chamblin, of the County of Loudon aforesaid, appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath, that he this deponent, on the fifteenth day of this present month of November, 1837, delivered to Wilson Carey Selden, the tenant in possession of the premisses in the declaration hereunto annexed mentioned, or of some part thereof, a true copy of the said declaration, and of the notice thereunder written, and did at the same time inform him, the said Wilson Carey Selden, that it was a declaration in ejectment, and that unless he appeared by some attorney in the said circuit court on the first day of the ensuing term of the said court, and cause himself, by a rule of the said court, to be *be* made a defendant in the room of the said casual ejector, Richard Fen, judgment would be entered against the said casual ejector by default, and that he the said Wilson C. Selden would thereupon be turned out of possession, or words to that effect.

Given under my hand this sixteenth day of November, 1837.

JAS. SINCLAIR.

And at a court of the United States for the fifth circuit and eastern district of Virginia, held at the city hall, in the city of Richmond, on Thursday the 31st day of May, 1838, Wilson Carey Selden is, on his motion, admitted defendant in this suit in the room of the said Richard Fen; and thereupon, by his attorney comes and defends the force and injury, &c., pleads the general issue, confesses the lease, entry and ouster in the declaration supposed, and agrees to insist on the title only at trial.

And at another day, to wit: at a court of the United States, for the fifth circuit and eastern district of Virginia, held at the city hall, in the city of Richmond, on Thursday the 30th day of May, 1839, (until which time the cause aforesaid was regularly continued,) came the parties by their attorneys, and thereupon came a party, to wit: Lewis Hill, William Y. Sheppard, James M. Ratcliffe, Theodorick Robertson, Richard S. Massie, Robert Bradley, Joseph H. Colquitt, James Bray, Thomas R. Price, James S. Binford, Sampson Jones and William Burke; who being elected, tried and sworn, the truth to speak upon the issue joined, and having partly heard the evidence, were adjourned over until to-morrow morning at ten o'clock.

And at another day, to wit: at a court of the United States, for the fifth circuit and eastern district of Virginia, held at the city hall, in the city of Richmond, on Friday the 31st day of May, 1839, came again the parties by their attorneys, and the same jury heretofore sworn in this cause appeared in court according to their adjournment; and having further heard the evidence, were adjourned over until to-morrow morning at *at* ten o'clock.

And at another day, to wit: at a court of the United States, for the fifth circuit and eastern district of Virginia, held in the city hall, on Saturday the first day of June, 1839, came again the parties by their attorneys, and the same jury heretofore sworn in this cause, and having further heard the evidence, were adjourned over until Monday morning at eleven o'clock.

And at another day, to wit: at a court of the United States, for the fifth circuit and eastern district of Virginia, held in the city hall, in the city of Richmond, on Monday the 3rd day of June, 1839, came again the parties by their attorneys, and the same jury heretofore sworn in this cause appeared in court according to adjournment; and having fully heard the evidence upon their oath, returned a special verdict in these words, to wit: we, the jury, find the following facts, that is to say:

1st. That Mary Mason Selden was seised and possessed in fee simple of certain tracts of land in the county of Loudon, containing, by estimation, four thousand acres, whereof the land now in controversy is part and parcel.

2nd. That the said Mary Mason Selden, being so seised and possessed, in the year intermarried with one Mann Page of North River, in the county of Gloucester; the said Mann Page, in

right of his said wife, and the said Mary Mason, his wife, continuing so seised and possessed, during her coverture to the said Mann Page; which ended by the death of the said Page in the year 1779, leaving three infant children by his said wife, to wit: John, the eldest son, William Byrd, the second, and Jane Byrd, the only daughter and youngest child.

3rd. That the said Mary Mason continued a widow, sole and unmarried, and solely seised and possessed in fee simple *simple* in her own right, of all the said lands until the year 1782, when she intermarried with Wilson Carey Selden, who, in right of his said wife, entered upon and held the said lands.

4th. That the said Selden soon after his said marriage, to wit: in the year 1783, became the guardian of the said three infant children of the said Mann Page, by the said Mary Mason, and as such guardian, gave the usual bonds required by law to the justices of the county court of Gloucester; and continued to act as such guardian during the minorities of the two sons, and until the marriage of the said Jane Byrd Page, one of which bonds is in the words following, and it is admitted that the other is in the same terms mutatis mutandis.

Bond as Guardian.

"Know all men by these presents, that we, Wilson Carey Selden, Carey Selden and John Whiting, are held and firmly bound unto Francis Tomkies, John Dixon, Matt. Anderson and Philip Tabb, gent., justices of the court of Gloucester County, now sitting, in the sum of ten thousand pounds, to the payment whereof, well and truly to be made to the said justices or their successors, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals this sixth day of March, 1783. The condition of the above obligation is such, that if the above bound Wilson Carey Selden, his executors, administrators or assigns, shall well and truly pay and deliver, or cause to be paid and delivered unto John Page and Jane Byrd Page, orphans of Mann Page, deceased, all such estate or estates, as now is, or are, or hereafter shall appear to be due to the said orphans, when and as soon as they shall attain to lawful age, or when thereto required by the justices of the said court, as also save harmless and undamnified, the said justices, their heirs, executors and administrators, from all trouble and damages that may arise about the said estate; then this obligation to be void, or else to remain in full force and virtue."

WILSON CAREY SELDEN, [SEAL.]
CAREY SELDEN, [SEAL.]
JOHN WHITING, [SEAL.]

"Sealed and delivered in the presence of.

"At a court held for Gloucester county, the 6th day of March, 1783, this bond was this day in open court acknowledged by the obligors to be their act and deed, and by the court ordered to be recorded.

Teste, THOMAS NELSON, Jr., *Clk. Court.*
Copy—Teste, ARTHUR L. DAVIES, *C. G. C.*

5th. That the said Mary Mason being so seised, died on the 17th day of September, in the year 1787, without ever having had any issue of her marriage with the said W. C. Selden, and leaving her said three children by her former marriage, all infants under the age of twenty-one years, and her only heirs at law, and her said husband, W. C. Selden, surviving her.

6th. That the said Jane Byrd Page, in the month of April, in the year 1794, with the written consent of said W. C. Selden, her then guardian, (she being then an infant under the age of twenty-one years, and wanting about three months of being of full age,) intermarried with Thomas Swann, and died on the 31st October, 1812, leaving at the time of her death seven infant children by her said husband, being her only heirs at law, among others, the said Mary Scott, one of the lessors of the plaintiff; who, in June 1818, being still an infant under the age of twenty-one years, intermarried with the said John Mercer, one of the lessors of the plaintiff; that of these the surviving children of the said Jane, two, to wit: Edward Swann, born in 1795, after having attained his full age, and before the institution of this suit, and John Swann, who died between the years 1826 and 1830, having attained his full age before his death, died intestate and without issue, their said father and the residue of said children surviving them; and that the said father is still alive.

7th. That the said John Page, some time in the spring of the year 1800, died, leaving his wife, Elizabeth K. Page, surviving him, and having first duly made and published his last will and testament, duly proved and recorded after his death, whereby he devised all his estate, real and personal, after the death of his said wife *wife*, to two of the children of his said brother, W. B. Page, to wit: William B. Page and Mary M. Page, and to three of the children of his said sister, Jane B. Swann, to wit: the said Edward, Mary and Thomas, as tenants in common; the said Edward having afterwards died intestate, unmarried and without issue as aforesaid, and the said Mary having afterwards intermarried with the said John Mercer as aforesaid, and the said Elizabeth K. Page having died some time in the year 1836, which will and probate we find in the words following, to wit:

John Page's Will.

"In the name of God, amen. I, John Page, of Buck Roe, in the County of Elizabeth city, being in a low state of health, but of

sound judgment, and apprehending from recent circumstances a speedy dissolution—and being anxious to settle my worldly affairs before that period, do make this, and by these presents confirm it my last will and testament, in manner and form following, viz:"

"Imprimis, I consign my body to the earth, and my spirit into the hands of that power which created it, relying with firm confidence that the blood shed by our blessed Saviour Jesus Christ, for the salvation of mankind, will wash away any sins I may have committed, during my stay in this terrestrial ball.

"Secondly. It is my will and desire, that all my just debts be paid, with the most scrupulous exactness, for which purpose, I have, in the hands of my brother William Byrd Page, in the County of Fairfax, in Virginia, bonds of Ferdinando Fairfax, of the County of Berkeley, the interest of which bonds will, I think, be sufficient to discharge any claim that may arise against me. But should that be insufficient, it is my will and desire that Doctor Wilson Cary Selden be made to pay the balance of a contract made betweeen us, for the land I now live on, called Buck Roe, which is recorded in the County Court of Elizabeth city.

"Thirdly. I give and bequeath, for her exemplary conduct to me during my life, all my property, both real and personal, to my wife Elizabeth King Page, to keep as long as she may live, and after her decease, it is my desire that it shall descend to my brother's and sister's children, namely, William Byrd Page, Mary Mason Page, Edward Swann, Mary Swann, and Thomas Swann, to be equally divided.

"Fourthly. I give and bequeath, to my wife Elizabeth King Page, all the property brought me at our marriage, to dispose of as she pleases forever—and whereas I have spent part of that property, it is my will and desire, that in lieu thereof five hundred pounds be given to my wife Elizabeth King Page, out of the above mentioned bonds of Ferdinando Fairfax, Esq., to dispose of as she pleases, forever.

"Fifthly. It is my last will and desire, that five hundred pounds out of the same bonds be given to my reputed son, John Page Barron, of Hampton, Virginia, to educate and bring him up.

"Sixthly, and lastly, I leave my said wife whole and sole executrix of this my last will and testament.

"In witness whereof, I set my hand, and hereunto affix my seal, this first day of May, in the year of our Lord eighteen hundred.

JOHN PAGE, [SEAL.]

"Signed, sealed and delivered, in presence of

CHARLES KING MALLORY,
CHARLES KING,
JOHN SMITH,
GEO. WRAY."

"At a Court, held for the County of Elizabeth city, June the 26th, 1800, this will was produced in Court, and proved by the oaths of Charles King and John Smith, two of the witnesses thereto, and ordered to be recorded.

Teste: WM. WESTWOOD, Jr., *D. Clk.*"

"A copy—Teste. W. S. ARMISTEAD, *Clk.*"

8th. That the said Thomas Swann, so surviving his said wife, as aforesaid, did on the 15th day of Sept., 1837, duly execute and deliver a deed of conveyance and release, to his said surviving children, which deed, together with the certificate of the acknowledgement and record of the same, is in the words following, to wit:

Swann's Deed.

"This indenture, made this fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty-seven, between Thomas Swann, of the city of Washington, of the one part, and Mary Scott Mercer, Wilson C. Swann, Thomas Swann, Jr., William P. Swann, and Robert T. Swann, children of him, the said Thomas Swann, and all of the State of Maryland, of the other part: whereas, Jane B. Swann, late wife of the said Thomas Swann, was entitled, as it is believed, to one third part of the estate of Loudon County, and State of Virginia, of which her mother, who married Wilson C. Selden, now dead, was in her life time seised and possessed, and which estate, upon the death of her said mother, was taken possession of by the said Wilson C. Selden, and the greater part thereof was held and occupied by him, until *that* period of his death; and whereas, it has been doubted, whether the said Swann, upon the death of his said wife, was not entitled as tenant, by the courtesy, to his wife's third part of the said estate, and the said Thomas Swann being willing to remove all doubts, in regard to his interest in that portion of the said estate, of which the said Wilson C. Selden died possessed, as well as any other right, title, or interest, which may have accrued to, or devolved upon him, in consequence of the deaths of his sons Edward Swann, Thomas Swann, and John Swann, now dead. Now this indenture witnesseth, that the said Thomas Swann, as well in consideration of the premises aforesaid, as for and in consideration of the natural love and affection which he hath, and beareth to his said children, hath granted, bargained and sold, released, surrendered, and given up, and by these presents doth grant, bargain and sell, release, surrender and give up, to them, the said Mary Scott Mercer, Wilson C. Swann, Thomas Swann, Jr., William P. Swann, and Robert P. Swann, all the right, title, and interest, which he had or hath, as tenant by the courtesy, to that portion of the said estate of which the said Wilson C. Selden died possessed, as aforesaid, as

well as any other right, title or interest, which may have accrued to, or devolved upon him, in consequence of the deaths of his sons, Edward Swann, Thomas Swann, and John Swann, now dead. To have and to hold the said hereby granted, and released, *and released* premises unto them, the said Mary S. Mercer, Wilson C. Swann, Thomas Swann, Jr., William P. Swann, and Robert P. Swann, their heirs and assigns forever, to the only proper use and behoof of them, the said Mary S. Mercer, Wilson C. Swann, Thomas Swann, Jr., William P. Swann and Robert P. Swann, their heirs and assigns forever. In witness whereof, the said Thomas Swann hath hereunto set his hand, and affixed his seal, the day and year first before written."

THOMAS SWANN, [SEAL.]

"Signed, sealed and delivered, in presence of.

"LOUDON COUNTY, *sct.*
Clerk's Office, Sept. 18th, 1837.

"This deed of release from Thomas Swann, to Mary Scott Mercer, Wilson C. Swann, Thomas Swann, Jr., William P. Swann and Robert Swann, was this day acknowledged by said Thomas Swann, and admitted to record.

"Teste, CHAS. G. ELDRIDGE, *C. C. C.*

"A Copy—Teste. CHAS. G. ELDRIDGE, *Clk.*"

9th. That the said Mary Mason, at the time of her marriage with said Selden, and for a long time before, lived, and had her residence and dwelling in the County of Gloucester, and after such marriage, she and the said Selden, her husband, continued so to live, and reside, and to have their fixed dwelling in said County, for some time, until they afterwards removed to the County of Elizabeth city, where they continued so to live and reside, and to have their fixed dwelling and home, until her death, at and on the day aforesaid: That the said Mary Mason, with her said husband, had left their said home, in the summer of the said year, 1787, on a journey to the springs at Bath, in Berkley County, where they arrived and spent the usual season at the springs; that they had left the said springs, on their return home, and had reached the town of Winchester, in Frederick County, Virginia, on their journey home in September, 1787, when the said Mary Mason was taken so ill at that place, as to be unable to prosecute her journey, and there died of such illness on the 17th of the said month of September, at a public Inn, kept by one Bush; being the same day on which her privy examination was taken to the deed from her husband and herself, to Robert Mackay, as hereinafter mentioned; that neither the said W. C. Selden, nor the said Mary Mason, his wife, did ever reside, or have any home or dwelling in the said County of Frederick, except their said stay at Winchester, from the time of

their arrival there in the course of the said journey home, on or about the 12th day of September, till her death on the 17th of the same month, as aforesaid.

10th. That after the said marriage between the said Wilson C. Seldon and Mary Mason Page, viz: on the twenty-second day of March, in the year 1784, the said Wilson Cary Selden, and Mary Mason, his wife, being seised of the aforesaid tract of land, in right of the said Mary Mason, executed a deed, purporting to convey to the aforesaid William Byrd Page, her son, two thousand acres, part of the aforesaid tract, estimated to contain four thousand acres, which deed has never been recorded, and is not to be found, after diligent search and inquiry.

11th. That on the 22d of December, 1784, the said Wilson Cary Selden, and Mary Mason, his wife, being still seised of the land aforesaid, except so far as the said deed to W. B. Page may, in law, have interrupted that seisin, executed a deed purporting to convey in fee simple, to Cary Selden, father of the said Wilson Cary Selden, the whole of the said four thousand acres of land, with an exception, in which the aforesaid deed to William Byrd Page is mentioned, in these words, viz: "except two thousand acres, part thereof which were given and granted by the said Wilson Cary Selden, and Mary Mason, to William Byrd Page, second son of the said Mary Mason, by deed bearing date the 22d day of March, 1784, proved and recorded in the general Court, reference thereto had, will appear." To the execution of this deed to Cary Selden, the said Mary Mason was privily examined on the 21st of April, 1785, by Miles King and Worlock Westwood, two justices of the peace for the County of Elizabeth city, the County in which the said Wilson C. Selden and Mary Mason then resided—under a commission issued from the office of the general Court of Virginia, bearing date the 1st day of January, 1785. And the said deed and commission, the certificate of the privy examination aforesaid, were recorded in the Court of the aforesaid County of Loudon, on the fourteenth of April, in the year eighteen hundred and eighteen, having been produced to said Court by said W. C. Selden, and there acknowledged by him, which said deed, commission, certificate of privy examination, and certificate of recording, are in the following words and figures, to wit:

Deed from W. C. Selden and Mary Mason, his wife, to Cary Selden.

"This indenture, made the twenty-second day of December, in the year of our Lord one thousand seven hundred and eigty-five, between Wilson Cary Selden, Esq., of North river, in the County of Gloucester, and Mary Mason, his wife, of the one part, and Cary Selden, of Buck Roe, in the County of Elizabeth city, of the other part, witnesseth, that for and in consideration of the sum of five shillings, current money of Virginia, by the said Cary to the said

Wilson Cary, in hand paid at, or before, the ensealing and delivery of these presents, the receipt whereof, he, the said Wilson Cary Selden, doth hereby acknowledge, and thereof doth acquit, and discharge the said Cary Selden, his executors, and administrators; they the said Wilson Cary Selden, and Mary Mason, his wife, have granted, bargained, sold, aliened and confirmed, and by these presents, do grant, bargain, sell, alien, and confirm unto him, the said Cary Selden, his heirs and assigns, all that tract or parcel of land, containing by estimation four thousand acres, be the same more or less, situate, lying, and being in the County of Loudon, except two thousand acres, part thereof which were given and granted, by the said Wilson Cary Selden, and Mary Mason, his wife, to William Byrd Page, second son of the said Mary Mason, by deed bearing date the 22d day of March, one thousand seven hundred and eighty-four, proved and recorded in the general court, reference being thereto had, will appear; which said four thousand acres of land, the said Mary Mason inherited from her brother, and are bounded by the known and antient bounds thereof, and all houses, edifices, buildings, yards, gardens, woods, ways, waters, profits, commodities, hereditaments, and appurtenances whatsoever, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said Wilson Cary Selden, and Mary Mason, his wife, or either of them, of and *and* to the same, or any part thereof; to have and to hold all and singular the above granted premises, with the appurtenances, except as is before excepted, unto him the said Cary Selden, his heirs, and assigns, to the only proper use and behoof of him the said Cary Selden, his heirs and assigns, for ever. And the said Wilson Cary Selden, and Mary Mason, his wife, for themselves and their heirs, do covenant, grant, and agree, to and with the said Cary Selden, his heirs, and assigns, by these presents, that they the said Wilson Cary Selden, and Mary Mason, his wife, the above granted premises, *with the except and* always excepting the said two thousand acres of land, before mentioned, to be given and granted to the said William Byrd Page, against the lawful claim and demands of them, the said Wilson Cary Selden, and Mary Mason, his wife, or either of them, and of all, and every other person, and persons whatsoever, shall and will warrant, and forever defend, by these presents. In witness whereof the parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written. WILSON CARY SELDEN, [L. S.]
MARY MASON SELDEN, [L. S.]"

"Signed, sealed, and delivered, in presence of
JOHN WHITING,
FRANCIS WALHINS,
JOB COLTON."

Commission.

VIRGINIA, *sct.*

"The commonwealth of Virginia, to Worlick Westwood, Jacob Wray, and Miles King, gentl'n, greeting:

"Whereas, Wilson Cary Selden, and Mary Mason, his wife, by their certain indenture of bargain and sale, bearing date the 22d day of December, 1784, have sold and conveyed unto Cary Selden, the fee simple estate of four thousand acres of land, with the appurtenances, lying and being in the Parish of in the County of Loudon; and, whereas, the said Mary Mason cannot conveniently travell to our General Court of this commonwealth, to make acknowledgement of the said conveyance, therefore, we do give unto you, or any two or more of you, power to receive the acknowledgement which the said Mary Mason shall be willing to make before you, of the conveyance aforesaid contained in the said indenture, which is hereunto annexed; and we do therefore command you that you do personally go to the said Mary Mason, and receive her acknowledgement of the same, and examine her privily and apart from the said Wilson Cary Selden, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whither she be willing that the same should be recorded in our said General Court; and when you have received her acknowledgement and examined her as aforesaid, that you distinctly and openly certify us thereof, in our said General Court, under your seals, sending there this said indenture and this writ.

"Witness, Paul Carrington, Esq., Chief Justice of our said Court, at Richmond, the first day of January, 1785, in the ninth year of the commonwealth.

"JOHN BROWN, *C. G. C.*

Certificate.

"By virtue of this commission to us directed, we did personally go to Mary Mason Selden, wife of the within mentioned Wilson Cary Selden, and examined her privily and apart from her said husband, and before us she did acknowledge the indenture hereto annexed, to be her act and deed, and declared that she did the same freely and voluntarily, and without the persuasions or threats of her said husband, and that she was willing the same should be recorded in the General Court of the commonwealth, of which we do certify the said commonwealth, under our hands and seals, this 21st day of April, 1785.

"MILES KING, [L. S.]
"WORLICK WESTWOOD. [L. S.]

Certificate of Record.

"At a Court held for Loudon County, the 14th day of September, 1818, this deed, from Wilson Cary Selden, and Mary Mason, his wife, to Cary Selden, was acknowledged by the said Wilson Cary Selden, to be his act and deed, which, together with the certificate of the relinquishment of dower of the said Mary Mason, his wife, thereto annexed, is ordered to be recorded.

"Teste: C. BINNS, *Clk.*"

12th. That on the first day of January, in the year 1785, the said Cary Selden, together with Elizabeth, his wife, executed a deed, never recorded, purporting to convey in fee simple, to the said Wilson Cary Selden, the aforesaid tract of four thousand acres of land, with the exception of the two thousand acres aforesaid; which said deed, with the commission, the certificate of the privy examination of the said Elizabeth, are in the following words and figures, viz:

Deed from Selden to Selden.

"This indenture, made the first day of January, in the year of our Lord one thousand seven hundred and eighty-five, between Cary Selden, of Buck-Roe, in the County of Elizabeth city, Esq., and Elizabeth, his wife, of the one part, and Wilson Cary Selden, of North River, in the County of Gloucester, Esquire, of the other part, witnesseth, that for and in consideration of the sum of five shillings, current money of Virginia, by the said Wilson Cary to the said Cary in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof he, the said Cary Selden, doth hereby acknowledge, and thereof doth acquit and discharge the said Wilson Cary Selden, his executors and administrators; they, the said Cary Selden, and Elizabeth, his wife, have granted, bargained, sold, aliened and confirmed, and by these presents doth grant, bargain, sell, alien and confirm unto him, the said Wilson Cary Selden, his heirs and assigns, all that tract or parcel of land, containing, by estimation, four thousand acres, be the same more or less, situate, lying, and being in the County of Loudon, which said tract or parcel of land was sold and conveyed to the said Cary Selden, by the said Wilson Cary Selden, party to these presents, and Mary Mason, his wife, by deed bearing date the twenty-second day of December, in the year of our Lord one thousand seven hundred and eighty-four, except two thousand acres, part thereof which were given and granted by the said Wilson Cary Selden, and Mary Mason, his wife, to William Byrd Page, second son of the said Mary Mason, as by the said deed proved and recorded in the General Court, reference being thereunto had, will more fully appear; and all houses, buildings, yards, gardens, woods, ways,

waters, water-courses, profits, commodities, hereditaments, appurtenances, thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of them, the said Cary Selden, and Elizabeth, his wife, or either of them, of, in and to the same or any part thereof; to have and to hold all and singular the above granted premises, with the appurtenances, except as is before excepted, unto him, the said Wilson Cary Selden, his heirs and assigns, to the only proper use and behoof of him, the said Wilson Cary Selden, his heirs and assigns, forever. And the said Cary Selden, for himself and his heirs, doth covenant, grant and agree to and with the said Wilson Cary Selden, his heirs and assigns, by these presents, that he, the said Cary Selden and his heirs, the above granted premises, with the appurtenances, except and always excepting the said two thousand acres of land before mentioned, to be given and granted to the said William Byrd Page, against the lawful claim and demand of him, the said Cary Selden and his heirs, and of all and every other person and persons whatsoever, shall and will warrant and forever defend, by *by* these presents. In witness whereof, the parties to these presents have hereunto set their hands, and affixed their seals, the day and year first above written.

"CARY SELDEN, [L. S.]
"ELIZABETH SELDEN. [L. S.]"

"Sealed and delivered in presence of
JAMES MCCLURG,
THOS. HALTON,
PHILIP PARWELL,
RICHD. BARRON."

Commission.

"VIRGINIA, *sct.*

"The commonwealth of Virginia, to Miles King and Worlick Westwood, gent., greeting.

"Whereas, Cary Selden, and Elizabeth, his wife, by their certain indenture of bargain and sale, bearing date the first day of January, 1785, have sold and conveyed unto Wilson Cary Selden, the fee simple estate of four thousand acres of land, with the appurtenances, lying and being in the County of Loudon. And whereas, the said Elizabeth cannot conveniently travell to our General Court of this commonwealth, to make acknowledgement of the said conveyance, therefore, we do give to you or any two or more of you, to receive the acknowledgement which the said Elizabeth shall be willing to make before you, of the conveyance

aforesaid, contained in the said indenture, which is hereunto annexed; and we do therefore command you that you do personally go to the said Elizabeth, and receive her acknowledgement of the same, and examine her privily and apart from the said Cary, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing that the same should be recorded in our said General Court; and when you have received her acknowledgement and examined her as aforesaid, that you distinctly and openly certify us thereof, in our said General Court, with your seals, sending there this said indenture and this writ. Witness, Paul Carrington, Esq., Chief Justice of our said Court, at Richmond, the third day of January, 1785, in the eighth year of the commonwealth.

"JOHN BROWN, *C. C.*"

Certificate of privy examination.

"By virtue of this commission to us directed, we did personally go to Elizabeth Selden, wife of the within mentioned Cary Selden, and examined her privily and apart from the said Cary, her husband, and before us she did acknowledge the indenture hereunto annexed, to be her act and deed, and declared that she did the same freely and voluntarily, and without the persuasions or threats of her said husband, and that she was willing the same should be recorded in the General Court of the commonwealth, of which we do certify the Court of the said commonwealth, under our hands and seals, this 21st day of April, 1785.

"MILES KING, [L. S.]
"WORLICK WESTWOOD. [L. S.]"

13th. That on the 15th day of September, in the year 1787, the said Wilson Cary Selden, and Mary Mason, his wife, whilst they were in the town of Winchester, in the County of Frederick, in this State, as is above stated, executed to the aforesaid William Byrd Page, her second son, a deed, purporting to convey to him, by certain metes and bounds, two thousand acres, part of the aforesaid tract in Loudon, which deed, with the commission for the privy examination of the said Mary Mason, dated on the said 15th day of September, 1787, and the certificate of her privy examination, made on the 17th day of the same month, were recorded in the County Court of the said County of Loudon, on the 8th of October, 1787, and the same are in the following words and figures, to wit:

Deed, Selden to Page.

"This indenture, made this 15th day of September, in the year of our Lord one thousand seven hundred and eighty-seven, between Wilson Cary Selden, Esq., late of North River, in the County of

Gloster, now of the town of Hampton, in the County of Elizabeth City, and Mary Mason, his wife, of the one part, and William Byrd Page, second son of the said Mary Mason, of the other part, witnesseth, that the said Wilson Cary Selden, and Mary Mason, his wife, in consideration of the maternal love and affection which they have and bear to the said William B. Page, and of five shillings, current money, to the said Wilson C. Selden in hand paid by the said William B. Page, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good causes and considerations them thereunto moving, they, the said Wilson C. Selden, and Mary Mason, his wife, have granted, bargained, sold, aliened and confirmed, and by these presents do grant, bargain, sell, alien and confirm unto the said William B. Page and his heirs, two thousand acres of land, with the appurtenances, situate in the County of Loudon, being part of four thousand acres, which the said Mary Mason inherited from her brother, which two thousand acres, together with five hundred acres, the property of Bernoy, are bounded as follows, agreeable to a survey there lately made by William Hough, beginning at a large white oak standing near the road, on the line of the original tract, extending thence with said line, correcting the courses according to the variation from the original survey, to 55 E. 577 poles, to a scrubby white oak, on a level, then to 20½ W. 373 poles, crossing the Alexandria road, at 200 poles, and the Tuscarora branch, at about 300 poles, to two white oaks, by H. Deane, thence S. 62 E. 130 poles, to two white oaks and a *fell* down hickory, by a small *drane*, thence S. 42 E. 96 poles, to two red oaks, one being fell down, on the bank of Goose creek, then down the said creek the courses and meanders of these of No. 11 E. 174 poles, No. 11 W. 20 poles, No. 31 W. 42 poles, crossing the mouth of Tuscarora at 18 poles, on the last course, No. 22 W. 18 poles, No. 41 E. 36 poles, No. 59 E. 43 poles, No. 66 E. 103 poles, No. 15 E. 20 poles, No. 26 E. 40 poles, No. 36 E. 57 poles, No. 41 E. 34 poles, No. 6 W. 26 poles, No. 14 E. 20 poles, No. 67 E. 80 poles, No. 57 E. 11 poles, No. 83 E. 112 poles, to two white oaks on the bank of the creek below the mouth of a gut corner to George Lee's former tract, then with the lines of the said tract No. 19 W. 78 poles, to a dogwood, within two poles twenty-three links, to a marked black oak, No. 88 W. 40 poles, to a white oak stump and locust post, planted, then No. 41 W. 134 poles, to a white oak and black, then No. 14 E. 53 poles, to where a double white oak stood by a later marked white oak, and where are now marked two small black oak saplings; also then, No. 28 W. 42 poles, to a dead elm and formerly a Spanish oak, on Potomac river bank, a persimmon bush by the elm is now marked, then up the river the courses and meanders thereof, No. 76 W. 36 poles, No. 87 West 24 poles, No. 80 West 28 poles, No. 68½ W. 64 poles, So. 85 W. 8 poles, No. 50 W. 10 poles, No. 75 W. 36 poles, No. 63 W. 24 poles, No. 61 W. 62

poles, No. 70 W. 6 poles, W. 4 poles, No. 78 W. 9 poles, No. 75 W. 10 poles, No. 72 W. 13 poles, No. 85 W. 14 poles, No. 62 W. 82 poles, No. 50 W. 30 poles, No. 40 W. 28 poles, No. 23 W. 152 poles, cross the Muddy gut at 22 poles, on the last line, No. 13 W. 33 poles, to a Spanish oak stump on the river bank, corner of Newman's lot, where are marked a Spanish oak, and also several limbs growing from one root under a ledge of rocks, then leaving the river S. 61¼ W. 66 poles, to a large white oak and two black oak saplings, corner to Bennett's lot, then S. 27 E. 153 poles, to a hickory and two white oaks, Bennett's corner, on the north side of the Cat-tail branch, within a few poles of the said branch, then South 26½ West 246 poles, to the beginning, containing two thousand acres, exclusive of the five hundred before mentioned, the property of Bernoy, together with all and singular the appurtenances to the said two thousand acres of land belonging or in any wise appertaining, and all the right, title and interest of them, the said Wilson C. Selden and Mary Mason, his wife, of, in or to the same, and to every part thereof; to have and to hold the said two thousand acres of land, with the appurtenances, and all and singular the premises hereby intended to be granted and conveyed to the said William B. Page, his heirs and assigns, to the only proper use and behoof of him, the said William B. Page, his heirs and assigns, forever. In witness whereof, the parties have hereunto set their hands and seals, the day and year first above mentioned.

"WILSON C. SELDEN, [L. S.]
"MARY M. SELDEN. [L. S.]"

"Sealed and delivered in presence of
JOHN SMITH,
J. G. DOWDALL,
DAVID KENNEDY,
ALEXR. WHITE,
BATTAILLE MUSE, witness for Wilson C. Selden."

"LOUDON COUNTY, *sct.*

"The Commonwealth of Virginia to John Smith, James Gamel Dowdall and David Kennedy, of the County of Frederick, Gent'n, Greeting:

"Wilson C. Selden and Mary Mason, his wife, by their certain indenture bearing date the 15th day of September, 1787, have granted and conveyed to William Byrd Page, second son of the said Mary Mason, two thousand acres of land with the appurtenances, be the same more or less, situate in the said county of Loudon, being part of a tract of land containing by estimation four thousand acres, inherited from her brother, and is more particularly described in the indenture above mentioned: And whereas the said Mary Mason cannot conveniently travel to the court of our said county, to make her acknowledgement of the said conveyance, therefore, we do give unto you, or any two or

more of you, power to receive the acknowledgement which the said Mary Mason may be willing to make before you, of the conveyance aforesaid, contained in the said indenture hereto annexed; we do therefore command you, that you do personally go to the said Mary Mason and receive her acknowledgement of the same, and examine her privily and apart from her said husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing that the same be recorded in the court of the said county of Loudon. And when you have received her acknowledgement and examined her as aforesaid, that you distinctly and openly certify us thereof in our said county court, under your hands and seals, sending then there the said indenture and this writ.

"Witness Charles Binns, clerk of our said court at the court-house of the said county, this 15th day of September, 1787, and in the 12th year of the Commonwealth.

"CHS. BINNS."

Certificate of Privy Examination.

"FREDERICK, *sct.*

"By virtue of the within commission to us directed, we did personally go to the within named Mary Mason, wife of the within named Wilson Cary Selden, and examined her privately and apart from her said husband, and before us she did acknowledge the indenture hereto annexed to be her act and deed, and declared, that she executed the same freely and voluntarily, without the persuasions or threats of her said husband, and that she was willing the same should be recorded in the county court of Loudon, of which we do certify the said court, given under our hands this 17th day of September, 1787, and in the 12th year of the Commonwealth.

"JOHN SMITH, [L. S.]
"J. G. DOWDALL, [L. S.]
"DAVID KENNEDY. [L. S.] "

"At a court held for Loudon County, October 8th, 1787, this indenture was acknowledged by Wilson Cary Selden, Esquire, party thereto, and together with the commission for the privy examination of the feme and the certificate of the execution thereof, being returned into court, ordered to be recorded.

"Teste: CH. BINNS, *Clk.*
"Copy—Teste: CHS. BINNS, *Clk.*"

14th. That on the same 15th day of September, 1787, the said Wilson Carey Selden and Mary Mason, his wife, while in the town of Winchester as aforesaid, executed another deed purporting to convey to Dr. Robert Mackay two thousand acres, other part of the

said tract of land in Loudon county, described as being the whole thereof, except that which by the aforesaid deed of the same date had been conveyed by metes and bounds to the said William Byrd Page; that on the 17th day of the same month the said Mary Mason, then continuing in the said town of Winchester, was privily examined touching the execution of the said deed to Mackay, by John Smith, J. G. Dowdall and David Kennedy, three justices of the peace for the county of Frederick aforesaid, under a commission from the county court of Loudon aforesaid, bearing date on the 15th day of September, 1787, which said deed and commission, and the certificate of the privy examination aforesaid, were recorded in the said county court of Loudon, on the 8th day of October, in the year 1787, and are in the words and figures following, viz:

Deed from Selden to Macky.

"This indenture, made this fifteenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, between Wilson Cary Selden, Esq., late of North River, in the county of Gloucester, but now of the town of Hampton in the county of Elizabeth City, and Mary Mason, his wife, of the one part, and Doctor Robert Macky, of Winchester, in the county of Frederick, of the other part, witnesseth, that the said Wilson Cary Selden and Mary Mason, his wife, in consideration of the sum of one hundred pounds current money of Virginia, to him, the said Wilson Cary Selden, in hand paid by the said Robert Macky, at or before the sealing and delivery of these presents, the *the* receipt whereof is hereby acknowledged; and for other good causes and considerations them thereunto moving, they, the said Wilson Carey Selden and Mary Mason, his wife, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, alien and confirm to the said Robert Macky and his heirs, two thousand acres of land with the appurtenances, be the same more or less, situate in the county of Loudon, being all that part of a tract of land which the said Mary Mason inherited from her brother, containing by estimate four thousand acres, except two thousand acres, part thereof, granted and conveyed by the said Wilson Cary Selden and Mary Mason, his wife, to William Byrd Page, second son of the said Mary Mason, by indenture bearing equal date with the above mentioned indenture; and all houses, buildings, yards, gardens, orchards, ways, waters, woods, profits, commodities, hereditaments and appurtenances, whatsoever to the same belonging or in any wise appertaining. To have and to hold the said two thousand acres of land with the appurtenances, and all and singular the premisses hereby intended to be bargained and sold to him the said Robert Macky, his heirs and assigns, to the only proper use and behoof of him the said Robert Macky, his heirs and assigns forever. And the said Wilson Cary Selden and Mary

Mason, his wife, for themselves, their heirs, executors and administrators, do covenant and grant to and with the said Robert Macky, his heirs and assigns, that the said Mary Mason now is seised of a good, sure and indefeasible estate of inheritance in fee simple, of and in the two thousand acres of land above mentioned, with the appurtenances, and that they the said Wilson Cary Selden and Mary Mason, his wife, now have good right, full power and lawful authority to grant and convey the same to the said Robert Macky and his heirs and assigns, according to the true intent and meaning of these presents. And the said Wilson Cary Selden and Mary Mason, his wife, for themselves and their heirs, the two thousand acres of land above mentioned, with the appurtenances, to the said Robert Macky and his heirs, against them the said Wilson Cary Selden and Mary Mason, his wife, and their heirs and assigns, and against every other person and persons, shall and will warrant and forever defend by these presents.

"In witness whereof, the said parties have hereunto set their hands and seals the day and year first above mentioned.

"WILSON CARY SELDEN, [L. S.]
"MARY M. SELDEN. [L. S.]

"Sealed and delivered in presence of
JOHN SMITH,
J. GAML. DOWDALL,
DAVID KENNEDY,
ALEXR. WHITE,
BATTAILE MUSE, for WILSON CARY SELDEN."

"Received 15th September, 1787, of Robert Macky, one hundred pounds current money of Virginia, the consideration mentioned in the above deed.

W. C. SELDEN."

"Teste,
ALEXR. WHITE,
BATTAILLE MUSE."

Commission.

"LOUDON COUNTY, *sct.*

"The Commonwealth of Virginia to John Smith, James Gamel Dowdall, and David Kennedy, of the County of Frederick, gentlemen, Greeting:

"Whereas Wilson Cary Selden and Mary Mason, his wife, by their certain indenture of bargain and sale, bearing date the 15th day of September, 1787, have sold and conveyed to Robert Macky, the fee simple of two thousand acres of land, with the appurtenances, be the same more or less, situate in the said county of Loudon, being all that part of a tract of land which the said Mary Mason

inherited from her brother, containing by estimation four thousand acres, except two thousand acres conveyed by the said Wilson Cary Selden and Mary Mason, his wife, to William Byrd Page, second son of said Mary Mason, by indenture bearing equal date with the above mentioned indenture of bargain and sale. And whereas the said Mary Mason cannot conveniently travel to the court of our said county, to make acknowledgement of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgement which the said Mary Mason shall be willing to make before you of the conveyance aforesaid contained in the said indenture which is hereto annexed. We do therefore command you, that you do go to the said Mary Mason, and receive her acknowledgement of the same, and examine her privily and apart from her said husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing that the same should be recorded in the court of the said county of Loudon; and when you have received her acknowledgement and examined her as aforesaid, that you *you* distinctly and openly certify us thereof in our said county court, under your hands and seals, sending then there the said indenture and this writ.

"Witness Charles Binns, clerk of our said court at the court-house of the said county, this fifteenth day of December, 1787, and in the twelfth year of the Commonwealth.

"CHAS. BINNS."

Certificate of privy examination.

"FREDERICK, *sct.*

"By virtue of the within commission to us directed, we did personally go to the within named Mary Mason, wife of the within named Wilson Cary Selden, and examined her privately and apart from her said husband, and before us she did acknowledge the indenture hereunto annexed to be her act and deed, and declared that she executed the same freely and voluntarily, without the persuasion or threats of her said husband, and that she was willing the same should be recorded in the county court of Loudon, of which we do certify the said court.

"Given under our hands and seals this seventeenth day of September, 1787, and in the twelfth year of the Commonwealth.

"JOHN SMITH, [L. S.]
"J. G. DOWDALL, [L. S.]
"DAVID KENNEDY. [L. S.]"

Certificate of Record.

"At a court held for Loudon county, October 8, 1787, this indenture and the receipt under written were acknowledged by

Wilson Cary Selden, Esq., party hereto, and together with a commission for the privy examination of the feme and the certificate of the execution thereof, being returned, ordered to be recorded.

"Teste, "CHAS. BINNS, *Cl. C.*"

15th. That on the 17th day of September, in the year 1787, and after the death of the said Mary Mason, the said Robert Macky and Catherine, his wife, executed a deed purporting to convey in fee simple to the said Wilson Cary Selden, the same land which had been conveyed to him by the deed next before mentioned, which said deed, with the receipt of the said Macky for the consideration endorsed thereon, together with the commission for the privy examination of the said Catherine, and the certificate of such examination, were recorded in the county court of Loudon on the 8th of October, 1787, and are in the words and figures following, viz:

"This indenture, made the 17th day of September, in the year of our Lord one thousand seven hundred and eighty-seven, between Robert McKay, of the town of Winchester, in the county of Frederick, and Catherine, his wife, of the one part, and Wilson Cary Selden, late of North River, in the county of Gloucester, Esq., next of the town of Hampton in the county of Elizabeth City, of the other part, witnesseth, that the said Robert McKay and Catherine, his wife, in consideration of the sum of £100 current money of Virginia to the said Robert McKay in hand paid by the said Wilson C. Selden, at or before the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, and thereof *do* acquit and discharge the said Wilson Cary Selden; and for other good causes and considerations them thereunto moving, they the said Robert McKay and Catherine, his wife, have granted, bargained and sold, aliened and confirmed, and by these presents do grant, bargain and sell, alien and confirm, to the said Wilson Cary Selden and his heirs, two thousand acres of land with the appurtenances, be they more or less, situate in the county of Loudon, being all that part of a tract of land which Mary Mason, wife of the said Wilson C. Selden, inherited from her brother, containing by estimation four thousand acres, part thereof granted and conveyed by the said Wilson Cary Selden and Mary Mason, his wife, to William Byrd Page, second son to the said Mary Mason, by indenture bearing date the fifteenth day of this month, and being the same land that was conveyed by the said Wilson Carey Selden and Mary Mason, his wife, to the said Robert McKay by deed of bargain and sale, dated the said fifteenth day of the present month of September, together with all and singular the appurtenances to the said two thousand acres of land belonging or in any wise appertaining, and all the right, title and interest of them the said Robert McKay and Catherine, his wife, of, into the same or any part thereof. To have and to hold the said two thousand acres of land, with the appurtenances, and all and singular the premises

hereby intended to be bargained and sold to the said Wilson Cary Selden, his heirs and assigns, to the only proper use and behoof of him the said Wilson Cary Selden, his heirs and assigns forever, and the said Robert McKay and Catherine, his wife, for themselves and their heirs, the two thousand acres of land, with the appurtenances above mentioned, to the said Wilson Cary Selden, his heirs and assigns, against them the said Robert McKay and Catherine, his wife, their heirs and assigns, shall and will warrant and forever defend by these presents.

"In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

"ROBERT McKAY, [L. S.]
"CATHERINE McKAY. [L. S.]

"Sealed and delivered in the presence of
J. G. DOWDALL,
JOHN SMITH,
DAVID KENNEDY,
JOHN HUFF,
ABEL JANNEY,
BATTAILLE MUSE."

"Recd. 17th day of September, 1787, of Wilson Cary Selden, Esq., one hundred pounds current money of Virginia, the consideration mentioned in the within deed.

"ROBERT McKAY. [L. S.]

"Witness,
JOHN SMITH,
JOHN HUFF."

"The Commonwealth of Virginia, to John Smith, J. G. Dowdall and David Kennedy, gentlemen, Greeting:

"Whereas Robert McKay and Catherine, his wife, by their certain indenture of bargain and sale, bearing date the 17th day of September, 1787, have sold and conveyed unto Wilson C. Selden the fee simple estate of and in two thousand acres of land, more or less, with the appurtenances, lying and being in the parish of Shelburne and county of Loudon; and whereas the said Catherine cannot conveniently travel to our court of our said county of Loudon, to make acknowledgement of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgement, which the said Catherine shall be willing to make before you of the conveyance aforesaid contained in the said indenture, which is hereto annexed; and we do therefore command you, that you do personally go to the said Catherine, and examine her privily and apart from the said Robert McKay, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing, the same

should be recorded in our county court; and when you have received her acknowledgement and examined her as aforesaid, that you distinctly and openly certify us in our said county court, under your hands and seals, sending then the said indenture and this writ.

"Witness Charles Binns, clerk of our said court at the court-house, the 8th day of September, 1787, and in the 12th year of our commonwealth.

"CHAS. BINNS, *C. C.*"

FRED'K. *sct.*

"By virtue of the within commission to us directed, we did personally go to the within named Catherine McKay, the wife of the within named Robert McKay, and examine her privily and apart from her said husband, and before us she did acknowledge the said indenture hereto *hereto* annexed to be her act and deed, and declared that she executed the same freely and voluntarily, without the persuasions or threats of her said husband, and that she was willing the same should be recorded in the county Court of Loudon, of which we do certify the said Court.

"Given under our hands and seals this 20th day of September, 1787, and in the 12th year of the Commonwealth.

JOHN SMITH, [L. S.]
J. GAM'L. DOWDALL, [L. S.]
DAVID KENNEDY, [L. S.]"

"At a Court held for Loudon county, Oct. 8th, 1787,

"This indenture and the receipt underwritten were proved by the oath of Battail Muse, and by the affirmation of Abel Janney, witness thereto, and ordered to be certified. And at another Court, held for the said county, to wit: the 10th day of December, in the year aforesaid, the same were fully proved by the oath of John Huff, another witness thereto, and together with the commission for the privy examination of the feme, and the certificate of the execution thereof, being returned, ordered to be recorded.

Teste, CHAS. BINNS, *Clk.*
Copy—Teste, C. BINNS, *Clk.*"

16th. That from the time of the intermarriage of the said Wilson Cary Selden with the said Mary Mason, up to the period of the said Mary's death, the said Wilson Cary Selden held actual possession of the whole of the said tract of land in Loudon county, and from the period of her death, continually, until his own death on the day of 1835, he continued to hold possession, to take the rents, issues and profits to his own use, and otherwise to use and enjoy as his own so much of the said tract in Loudon as is embraced in the aforesaid deed from Robert Macky and wife, except

so much thereof as he sold and conveyed to others, claiming it under the said deed alone from the period of its date until the year 1818, when the legal sufficiency of that deed being questioned, he caused the aforesaid deed from himself and wife to Cary Selden, with the commission and certificate of privy examination accompanying it, to be put of record in the county of Loudon, as is above stated, and from that time till his death claimed the said land, not only under the deed from Robert Macky aforesaid, but under the said conveyance to Cary Selden and the re-conveyance to himself above set forth.

17th. That between the years 1796 and 1812, the said Wilson Cary Selden sold and conveyed and delivered to sundry persons, and amongst others to the aforesaid Thomas Swann, while the husband of the aforesaid Jane Byrd, various parcels of the land embraced in the deed aforesaid from Robert Macky to him.

18th. That from the time of the death of the said Wilson Cary Selden up to the present time, the defendant, his son, has held the actual possession of so much of the said land embraced in the deed from Robert Macky, as his father had not sold and conveyed to others, claiming the same as his own absolute property, under the will of his father, taking its rents and profits to his own use, and otherwise using it as his own—which land so held by him is the same mentioned in the plaintiff's declaration, and is in quantity about acres.

19th. That after the said John Page had attained his full age, to wit, on the 21 December, 1792, the said Wilson Cary Selden, having settled with him his transactions as guardian, received from him a deed releasing to said Wilson Cary Selden and acknowledging satisfaction for all demands, which deed is in the words and figures following, to wit:

John Page's release to Selden.

"Know all men by these presents, that I, John Page, at present of the county of Elizabeth City, in the Commonwealth of Virginia, have exonerated, acquitted, released, and discharged, and by these presents do exonerate, acquit, release and discharge Wilson Cary Selden, of the county and Commonwealth aforesaid, of and from all manner of claims and demands, whether the same arose and existed in consequence of his having acted as guardian to me, or in any other capacity or situation; and I do hereby acknowledge to have received full satisfaction from the said Wilson C. Selden for every demand that I now have or ever had against him.

"In witness whereof I have hereunto set my hand and affixed my seal, this 21st day of December, one thousand seven hundred and ninety-two.

JOHN PAGE, [L. S.]"

"Sealed and delivered in presence of
THOMAS SWANN,
BENJ'N. EDWARDS."

20th. That after the said William Byrd Page had attained his full age of 21 years, he preferred against the said Wilson Cary Selden a claim on account of inequality in the partition of the aforesaid land, which claim was finally settled and adjusted between them, by an agreement that the said Wilson Cary Selden should pay to the said William Byrd Page, on account of such inequality, the sum of one thousand pounds, and should purchase from him five hundred acres of his land aforesaid, in manner as will appear by an agreement under the hands and seals of the parties, dated 12 July, 1794, in the following words and figures, to wit:

Agreement between W. B. Page and W. C. Selden.

"Memorandum of an agreement entered into this 12th day of July, in the year of our Lord one thousand seven and ninety-four, between Wilson Cary Selden, of the one part, and William Byrd Page, of the other part: Witnesseth, that whereas by sundry conveyances of a certain tract of land situate in the county of Loudon, containing four thousand acres, whereof Mary Mason Selden, deceased, was in her life time seised in fee simple, were conveyed to the said Wilson Cary Selden, and William Byrd Page, two thousand acres to each, and the said William Byrd Page conceiving that he is in justice entitled to an equal part of the said 4000 acres of land, as well in quantity as in quality, and the said Wilson Cary Selden, desirous to give perfect satisfaction and content to the said William Byrd Page on the subject, doth agree to pay to the said William Byrd Page the sum of one thousand pounds current money of Virginia, in order to make up the difference in the quality and quantity of their respective parts, in full satisfaction and discharge of all claim or claims either in law or equity, which the said William Byrd Page may or might have by reason or on account of the difference in the quality or quantity of the said two tracts of land, which the said William Byrd Page agrees to receive; and in consideration thereof to release all such claim or claims as he may or might have by reason of the premises.

"And it is further agreed by and between the parties aforesaid, that the said William Byrd Page shall sell unto the said Wilson Cary Selden four hundred acres of land adjoining the said Selden's land, to be laid off so as to suit and accommodate both parties as far as may be. The manner of laying off the said four hundred acres of land, and the price to be paid therefor, to be fixed by Jones Chapman, Thomas Ludwell Lee, John Littlejohn, Samuel Murry, and Hugh Douglass, or any two or more of them; the said thousand pounds and the amount of the purchase money of the said Wilson

Cary Selden to the said William Byrd Page, in annual instalments of £500 each, the first payment to become due on the first day of January, which shall be in the year of our Lord one thousand seven hundred and ninety-six.

"In witness whereof, the parties to these presents, have interchangeably set their hands and affixed their seals the day and year first written.

WILSON CARY SELDEN, [L. S.]
WM. BYRD PAGE. [L. S.]"

"Sealed and delivered in presence of
(N. B. The word hundred was interlined previous to the execution hereof.)
THOMAS SWANN,
JOHN EDMONDS."

"This instrument of writing was produced before me by Doctor Wilson C. Selden, and admitted by the parties to be the act and deed of the said Doctor Wilson C. Selden and William Byrd Page, to be witnessed by Thomas Swann and John Edmonds, Esq., and with said admission, to be used in evidence on the trial of the suit depending in the Superior Court of Chancery at Winchester, in which Edward Swann and others are complts., and said Wilson C. Selden is defendant.

SAML. M. EDWARDS,
"17 August, 1822. *Com. S. C. C. W.*"

21st. That afterwards, to wit, on the 23rd July, 1794, the said William Byrd Page having received full satisfaction from the said Wilson Cary Selden, for his transactions as guardian, executed to the said Wilson Cary Selden a receipt, acquittance and indemnity under his hand and seal, in the words and figures following, to wit:

Wm. Byrd Page's receipt.

"I do hereby acknowledge to have received from Wilson Cary Selden a bond for the sum of eight hundred and forty-eight pounds three shillings and three pence, in full for the balance due me on account of his transactions for me as my guardian. The award made between us in the said business being for the sum of nine hundred and twenty pounds nine shillings and seven pence, which, by judgments and bonds produced to me by the said Selden, has reduced it to the above mentioned sum of eight hundred and forty-eight pounds three shillings and three pence. And I do hereby indemnify and save harmless the said Wilson C. Selden, his heirs, exors. and admrs., of and from all manner of harm or injury whatever that may hereafter arise or accrue to him in consequence of his transactions as guardian aforesaid.

"Given under my hand and seal this 23d day of July, 1794, one thousand seven hundred and ninety-four.

WM. B. PAGE, [L. S.]"

"Sealed and delivered in presence of
THOMAS SWANN."

"This instrument of writing was produced before me by Dr. W. C. Selden, and admitted by complainants to be the act and deed of Wm. Byrd Page, and the body thereof to be in the hand writing of Thomas Swann, and witnessed by him, and with the said admission is to be offered as evidence on the trial of the suit depending in the Superior Court of Chancery at Winchester, in which Edward Swann and others are complainants, and said Wilson C. Selden is a defendant.

SAML. M. EDWARDS,
August 17th, 1822. *Commr. C. C. W.*

22nd. That after the marriage of the said Jane Byrd Page to Thomas Swann, the said Thomas Swann, her husband, on the 9th day of May, 1796, having received from the said Wilson Cary Selden the sum of six hundred and forty pounds, executed to the said Wilson Cary Selden a receipt, discharge and acquittance under the hand and seal of the said Thomas Swann, in the words and figures following, viz:

Thomas Swann's receipt.

"Received of Wilson Cary Selden, Esq., the sum of six hundred and forty pounds, given to me by him in consequence of my marriage with the daughter of his late wife, Mrs. Page, deceased, and intended for her use. In consideration whereof I do, in behalf of my wife Jane, acknowledge myself fully satisfied with the said sum, and do acquit and discharge him of and from all manner of claims and demands whatsoever, both in law and equity, which I now have or ever had against him in right of my wife aforesaid.

"In witness whereof I have hereunto set my hand and affixed my seal the 9th day of May, 1796.

THOMAS SWANN, [L. S.]"

"Sealed and delivered in presence of
H. LOVE."

"The within instrument of writing was produced before me by Doct. Wilson C. Selden, and admitted by the Complts. to be the act and deed of Thomas Swann, and with the said admission to be offered in evidence *of* the trial of the suit depending in the Superior Court of Chancery at Winchester, in which Edward Swann and others are complainants, and said W. C. Selden is a defendant.

SAML. M. EDWARDS,
Com. S. C. C. W."

" 17th August, 1822."

23rd. That, on the 6th December, in the year 1819, the lessors of the plaintiff and others, claiming as heirs of the aforesaid Jane Byrd, instituted their suit in Equity in the Superior Court of Chancery, then holden in the aforesaid town of Winchester, against the aforesaid Wilson Cary Selden and others, and in that suit filed their bill, and several amended and supplemental bills, claiming the same lands now in controversy upon alledged legal defects in the conveyances under which the said Wilson Cary Selden claimed them, and upon alledged equities set forth in these said bills; in which said Court, the said Wilson Cary Selden filed his answers, and such other proceedings were had, that, upon a final hearing of the cause, on the 16th of October, in the year 1830, in the Superior Court of Chancery, then holden at Fredericksburg, to which it had been duly removed, a final decree was pronounced, whereby the Court, disclaiming jurisdiction of the alledged legal imperfections in the conveyances aforesaid, but taking jurisdiction of the alledged matters of equity,—adjudged, ordered, and decreed, that the plaintiffs' bill should be dismissed with costs, but without prejudice to any suit at law which the plaintiffs might be advised to prosecute, on account of the alledged legal defects, or want of legal validity in the said deeds to transfer the title which the defendant asserted. The record of which said suit is in the words and figures following, to wit:

Record.

"Be it remembered, that, on the 6th day of December, 1819, came Edward Swann, John Swann, and others, by counsel, and sued out of the Clerk's office of the Superior Court of Chancery, for the district of Winchester, returnable to the first Monday in January thereafter, a subpœna, to answer in the usual form against Wilson Cary Selden and others; which writ was returned duly executed on the defendant, Wilson Cary Selden, on the 29th day of December, 1819.

"And at rules held in the Clerk's office of the Superior Court of Chancery, for the district of Winchester, for the month of March, 1820, came the said Edward Swann, John Swann, and others, by counsel, and filed their certain bill of complaint against the said Wilson Cary Selden and others; which bill is in the following words and figures, to wit:

Bill.

"To the Honorable the Superior Court of Chancery for the district of Winchester:

"Humbly complaining, your complainants, Edward Swann

John Swann, Wilson C. Swann, Thos. Swann, William P. Swann, Robert P. Swann,—which said John, Wilson, Thomas, William, and Robert, are infants, under the age of 21 years, by Edward Swann their next friend, and John Mercer, and Mary Scott, his wife, William B. Page and Roger Jones, and Mary Anne, his wife, —show unto your honor, that your complainants, Edward Swann, John Swann, Wilson C. Swann, Thos. Swann, William P. Swann, Robert P. Swann, and Mary S. Mercer, are the children of Thomas Swann and Jane Byrd, his wife, formerly Jane Byrd Page, the daughter of Mann Page, of North River, in the county of Gloucester; and your complainants, William B. Page and Mary Anne Jones, are the children of William Byrd Page, one of the sons of the aforesaid Mann Page, of North River.

"Your complainants state that the aforesaid Mann Page, of North River, intermarried with Mary Mason Selden, the daughter of Samuel Selden; and by his said marriage had three children, John and the aforementioned William Byrd and Jane Byrd; that the said Mann Page being seised of a considerable estate, real and personal, made and executed his last will and testament in due form, a copy of which is herewith exhibited marked No. 1; and departed this life in or about the year 1779, without having altered or revoked the same. The Gloster estate, devised by the said Mann to his son John, was the property of the said Mann, and of consequence subject to his disposition; but the real estate in Loudon, devised by him to his son, William Byrd Page, was the sole and absolute property of his wife, the said Mary Mason, and not subject to his disposition. Your complainants state that, some time after the death of the said Mann Page, it was ascertained that he had died in great embarrassment; and although *and although* he had left a very large and valuable personal estate, and several hundred slaves, that yet, either from the mismanagement of his executors, or from the extent of his debts, it seems to be understood that his daughter would altogether fail in obtaining payment of her legacy of £2,000; and it so happened that she never received one cent of the said legacy.

"The two children, then, of the said Mann Page, that is to say, the aforesaid William Byrd and Jane Byrd, had nothing to expect from the will of their father; and their only hope of assistance and support was from their mother, whose fortune was ample for that purpose. Your complainants have been informed, that their grandmother was fully apprised of the destitute situation of her children, William Byrd and Jane Byrd, and felt the necessity of making some provision for them; accordingly she applied to one of her relations, and stated to him her wish to convey to her son, William Byrd, one half of her real estate, and to charge the same with the payment of £1500 to her daughter; and she desired that a deed might be prepared to that effect. Your complainants are informed, that the said deed was prepared and actually executed

by their said grandmother; but what became of it after it was executed, your complainants know not, nor did they ever hear that such a deed had been executed until within the past year. It may be necessary here to state, that the real estate of which their said grandmother was seised, consisted of a tract of land in Loudon county, supposed to contain four thousand acres—the patent under which the same was held called for four thousand acres, or thereabouts; so that, when the conveyance was made of a moiety to William Byrd Page as aforesaid, this moiety was supposed to contain 2,000 acres; and it was undivided 2,000 acres, for no survey of division had at that time been made of the said land.

"Your complainants further state, that after this conveyance had been made by their grandmother as aforesaid, that is to say, some time in or about the year 1782, she intermarried with a certain Wilson Cary Selden, whom they pray may be made a defendant to this bill of complaint; and in consequence of this connection the said Wilson C. Selden became the guardian of the infant children of his said wife. Your complainants exhibit herewith a copy of the guardian's bond, which he entered into in the County Court of *Gloster* at the time he was appointed guardian of his wife's son John, and daughter Jane Byrd Page,—which copy is duly authenticated, and marked No. 2. The said defendant, in virtue of his said marriage, claimed and received the dower of his said wife in the Gloster estate, devised by the said Mann Page to his son, John, as aforesaid; and he also came into possession of the whole of the Loudon estate of his said wife, together with the slaves and stocks belonging to the estate of the said Mann, found thereupon, and enjoyed the benefit of the same for several years; and in the course of this period made various purchases of slaves, stocks, and household furniture, out of the estate of the said Mann Page, at very reduced prices, insomuch, that at the time of his wife's death, which happened in the year 1787, he was in possession of a personal estate amply sufficient for his comfortable support.

"Your complainants have no reason to suppose that their grandmother, after her marriage with the defendant, had changed her views with regard to her children. She was a kind and affectionate mother, and devotedly attached to her daughter, who was of very tender years, and totally and absolutely dependent upon her.—Your complainants having determined to investigate and contest the defendant's title to his estate, upon grounds which will be hereafter stated, they made known such determination; and after it was fully understood by the defendant, that is to say, in the month of September, 1818, he caused to be entered upon the records of Loudon Court, a certain instrument of writing, purporting to be a deed from himself and his wife to his father, Carey Selden, for the estate now the subject of dispute. Your complainants exhibit herewith a copy of his said deed, marked No. 3; and they most solemnly declare, that they never knew or ever heard of the exist-

ence of such deed until about the time it was recorded as aforesaid. Whether this deed was ever executed by their said grandmother, your complainants know not; nor can they admit that it was her deed. By this writing, however, it appears that, about two years after her marriage with the defendant, that is to say, on the 22d of December, 1784, the said defendant and his wife conveyed this estate to Carey Selden—excepting, however, therefrom 2,000 acres, which the deed states to have been conveyed by the said defendant and his wife to William Byrd Page on the 22d day of March, 1784, by deed recorded in the General Court. It may be here proper to remark, that the 2,000 acres excepted out of this conveyance must have been intended as a moiety of this estate, because the patent, as before stated, called only for 4,000 acres, and no division or survey had yet been made of the said land. The 2,000 acres, then, excepted of this conveyance, may be fairly presumed to be that 2,000 which she had conveyed to her son, William Byrd, before her marriage with the defendant, and which she had charged with the payment of £1500 to her daughter; and your complainants cannot but entertain the opinion, that in this last mentioned deed to William Byrd Page, there would be found to be this very provision for her said daughter. Your complainants have searched the General Court Records for this deed to William Byrd Page, but no such deed can be found, nor was any such deed ever recorded in that Court. Your complainants do not know whether the defendant means to set up a title under the deed to Carey Selden, but if he does, they do insist that strict proof may be made of the execution of the same; and that the deed executed by the said defendant and his wife to William Byrd Page as aforesaid, be produced by the said defendant, or good reason be shown for not producing the same. What may be the effect of this acknowledgement of the existence of a deed recorded in the General Court to William Byrd Page, your complainants know not: they must submit that question to the decision of the Court. But as to the deed to the said Carey Selden, if the defendant should set up a claim under the same, your complainants would contend that *that* deed, if it ever was executed, was never carried into effect; that it was retained by the defendant and his wife without being recorded, and was understood to be cancelled or surrendered by your complainants' grandmother: certain it is, that the defendant never made known the said deed to any of your complainants' family, and never held, or ever professed to hold, his estate under the said deed —and your complainants hope to be able to satisfy the Court that the same is wholly and absolutely void. Your complainants further state, that after the defendant's marriage with their said grandmother, he resided for some years in the county of *Gloster*, and afterwards removed from there to Hampton, in the county of Elizabeth City; and in the summer of 1787, while they dwelt in Hampton, your complainants' grandmother being then in bad

health, the defendant determined to carry her to Bath, in the county of Berkeley, and they accordingly set out from Hampton in the summer of that year upon their journey to Bath, and accomplished their said journey; and after remaining there a short time, they set out upon their return, but in consequence of the illness of your complainant's grandmother, they were unable to get further back upon their return than the town of Winchester, in the county of Frederick. That their grandmother lingered there for a short time, and departed this life at that place in the month of September, 1787.

"Your complainants further state, that while they were in Winchester, and when it was clearly ascertained that their said grandmother must die of her said illness, her husband, the said defendant, procured two deeds to be executed by her; one, conveying a portion of her estate to her son, William Byrd Page,—and the other, conveying, or purporting to convey, the residue of her estate to Dr. Robert Mackey: copies of those deeds, with the commissions, and privy examinations of their said grandmother, are herewith exhibited, marked No. 4. After these conveyances were executed, the said Mackey and his wife conveyed to the said defendant that part of the estate which had been conveyed to him as aforesaid: a copy of which said conveyance is herewith also exhibited, marked No. 5.

By reference to these deeds, it will be seen that no survey of this estate had been recently made, and that *that* part of it which had been conveyed to William Byrd Page, was designated by metes and bounds. It may be proper here to remark, that there is a great diversity in the quality of the soil of this estate, part of it being poor, cold and clayey, and the residue rich limestone land; the limestone begins to make its appearance in the heart of the estate, and thence it abounds in considerable quantity. That portion of it which had been conveyed to William Byrd Page, was of the poor part, and upon an average, not worth per acre perhaps one-third as much as the other part. It will be seen, too, that 2,000 acres were precisely meted out to him, and the whole surplus conveyed, or attempted to be conveyed to the defendant—what that surplus may be, your complainants do not know, but they believe it to be considerably more than 2,000; whether the terms of the deed would convey more than 2,000 acres, your complainants submit to the decision of the court.

Your complainants beg leave further to observe, that before the marriage of their grandmother with the defendant, she had, as before stated, conveyed one moiety of the estate to her son William Byrd Page, charging that moiety with the payment of £1,500 to her daughter, and if she did convey to her said son after her marriage with the defendant a moiety of the said estate, as stated in the deed to Cary Selden hereinbefore mentioned, there can be no doubt that the said £1,500 was still charged upon the said moiety, and your

complainants do aver, that the difference in value, between the 2,000 acres lastly conveyed by metes and bounds to the said William Byrd Page, and a fair and equal moiety of the said estate, would at the time of the said conveyance have been more than £1,500, and at this day more than $30,000, so that if the original intent of your complainants' grandmother had been carried into effect, William Byrd Page, her son, could have lost nothing by it, and her daughter, Jane Byrd, would have received her £1,500, what could have induced your complainants' grandmother to have executed these last conveyances, they are perfectly at a loss to conceive. If there had been any evidence of a want of affection for her children, or any conduct on the part of those children, to induce such a measure, it might in some degree account for this strange procedure—but no excuse of that sort is to be found; on the contrary her character was that of a tender and affectionate mother, and her children were of too tender years to have been objects of such direful neglect; your complainants cannot entertain the opinion, that it was her deliberate act, and they cannot but believe, that if the magistrates who had taken her examination, had explained to her the purport of these deeds; had informed her that she was conveying to her son about one-third part only in value of her estate, and the whole residue to the defendant, without any provision for her daughter, that she never would have acknowledged these conveyances. But your complainants have been informed, that they were not explained or read to her, and that at the time of her examination, she was either dying or so ill as not to be capable of attending to matters of that sort; such was the sensation produced by this unaccountable and unnatural act, that something seemed necessary to appease the feelings of those who were about the person of your complainants' grandmother, at the time of her death, and it was said to have been given out by the defendant, that he was to provide for her daughter, and that the estate had been given to him with that understanding.

"Your complainants will endeavor to lay before the court the testimony upon this part of the case, and they shall hope to obtain such relief upon it as the circumstances may justify; whatever may be the effect of the proofs upon this part of the case, your complainants nevertheless contend that these conveyances are void upon the face of It appears upon the face of the deeds themselves, that the defendant and his wife, at the time of the execution and acknowledgement of those deeds, were residents of the County of Elizabeth City. The deeds state that, 'they were formerly of the County of *Gloster*, but were then of Hampton in the County of Elizabeth City;' and your complainants are prepared to prove the fact, that at the time of the execution of the said deeds, they did dwell in the said County of Elizabeth City. Your complainants are advised, that at the time of the execution of these deeds, the privy examination of a feme covert could only be taken by the

justices of that county in which she dwelt, and the commissioners in the case of these deeds were sent to the County of Frederick, and executed by the justices of that county; that the said privy examinations were altogether null and void, and the deeds themselves entirely inoperative.

"Your complainants will moreover prove, that the deed to Dr. Mackey was not intended to be a *bona fide* conveyance to him. That the consideration expressed in the deed was altogether nominal, no money having been actually paid by him, or intended to be paid; and that if the said deed was in all other respects fairly and duly executed, that he took the said estate as a trustee for the use and benefit of your complainants' grandmother, and her heirs, and that the said Mackey was not authorized, in law or equity, to make a conveyance of the said estate to the said defendant, and that as the legal title has been thus passed to the said defendant, *that* he ought to be considered as a trustee, holding the said estate for the benefit of the heirs of your complainants' grandmother.

"Your complainants further show, that the defendant immediately after the death of his said wife, caused the said deeds last mentioned to be recorded in the County Court of Loudon, and that part of the estate which had been conveyed to the said William Byrd Page, was taken possession of by him the said defendant, as the guardian of the said William B. Page, and was held by him as guardian aforesaid, until the said William B. Page attained the age of twenty-one years, and then delivered up to him, and the residue of the said estate was taken and held by the said defendant as his own property, and the same has been held by him, and those claiming under him, ever since. Your complainants have been informed and believe it to be true, that William Byrd Page was under an impression, that the deeds from the defendant and his wife to Mackey and himself, executed in Winchester as aforesaid, were void, and he often threatened to institute a suit to set them aside; but as he held by one of the deeds 2,000 acres of the said estate, and in the event of their being set aside, would have been only entitled to one-third of the said estate, he declined contesting the validity of the said deeds; but that his said mother at the time of the execution of those deeds, intended that he should have an equal moiety of her estate, in quality as well as quantity, and claimed from the defendant some compensation for the difference in value, and the defendant agreed to pay him £1,000, which your complainants presume was paid.

"Your complainants further state, that Jane Byrd Page intermarried with Thomas Swann, on the 2d day of April, 1795; and some years after their marriage, the defendant gave to the said Thomas Swann £640, in consequence, as they have understood, of an intimation or promise from the said defendant, previous to the marriage of him, the said Thomas Swann, that he the said defendant should or would make some provision for his said intended

wife. Your complainants know of no other advancements made by the said defendant to the said Thomas Swann, and they believe that none other was ever made.

"Your complainants further state, that at the time of the marriage of the said Jane B. Page with the said Thomas Swann, she was under the age of 21 years, and she herself departed this life on the 30th of November, 1812, and your complainant, Edward Swann, did not attain the age of 21 years until the month of March, 1817. Your complainant, Mary S. Swann, intermarried with John Mercer on the 25th of June, 1818, before she attained her age of 21 years, and the other children of the said Jane B. Page are still infants under the age of 21 years. Your complainants being under the impression, that the deeds made by their said grandmother were null and void, considered themselves justly entitled to the estate mentioned in the said deeds, but willing nevertheless to lessen the extent of their said claim, and to leave the defendant in a state of independence and of ultimate affluence, they made to him the proposition contained in a letter, the copy of which, or the substance of which is herewith exhibited, marked No. 6, to which the defendant returned the answer herewith exhibited, marked No. 7. Seeing, in this answer of the defendant, no hope of an amicable settlement of their claims, they decided to resort to this honorable court for an investigation of their title, and decision according to the merits and justice of their case.

"If in this investigation, it should be the opinion of the court, that none of the deeds executed or pretended to be executed by your complainants' grandmother, as hereinbefore stated, are valid either in law or equity, then your complainants beg leave farther to state, that upon the death of their grandmother, her estate descended to her three children, John, William Byrd and Jane Byrd; that John departed this life in the year 1801, without issue, having first duly made and executed his last will and testament, a copy of which is herewith exhibited, marked No. 8. Your complainants, William B. Page, Mary Ann M. Jones, children of William B. Page, deceased, and Edward Swann and Mary S. Mercer, children of Thomas Swann and Jane B. his wife, are the devisees of the said John Page, and each entitled to *one* one-fifth part of a third of the said estate; the other child of the said Thomas Swann and Jane Byrd, his wife, mentioned in the said will, having departed this life an infant, his fifth part of aforesaid third became the property of Thomas Swann, his father, and he has transferred all his interest in the same to his children, as will appear by his deed herewith exhibited, marked No. 9. That William Byrd Page departed this life in the year 1812, intestate, leaving the following children, viz: William Byrd Page, Mary Anne Mason Page, now Mary Anne Mason Jones, Charles Henry Page, Mann Randolph Page, John Randolph Page, Richard Lucien Page and Edmonia Lee Page, Thomas Swann Page, Jane Byrd Page, Cary Selden

Page, all of whom were infants at the time of his death, and those of them who are not complainants in this suit, are prayed to be made defendants to this bill. Your complainants have already mentioned the children left by Jane B. Swann, and it is now only necessary to state, that in right of their mother, they would be entitled to one-third of the said estate. Your complainants have been informed that the 2,000 acres of land conveyed to William Byrd Page by his mother, as hereinbefore mentioned, have been all sold to different people, and *and* the same are now held under the said William Byrd Page.

"Your complainants do not certainly know the value of this land, nor whether it amount in value to more than one-third of the estate. They have no wish to disturb these sales, but are willing that the land should be viewed and valued, and if it should not amount in value to more than one-third, they shall be content that such arrangement shall be made, as shall seem to the court to be just and proper; if, again upon the investigation of this case, it should be the opinion of the court that the children of Jane B. Swann are entitled only to the £1,500 originally intended for her by her said mother, your complainants would then expect that the payment would be so arranged and charged upon the parties interested, as should seem to be just and equitable; and if any portion of this sum should fall upon the family of the said William B. Page, your complainants would be willing that it should be paid out of the personal assets, and not charged upon the lands sold by him as aforesaid.

"Your complainants further state, that if they are entitled to this estate, they are equally so to the rents and profits arising from it, and they claim from the defendant an account of those rents and profits, or payment of the same.

"In tender consideration whereof, and for as much as your complainants are remediless in the premises, by the strict rules of the common law, and cannot obtain full and effectual relief in the premises, without the interposition of this honorable Court in Chancery, where matters of this nature are properly cognizable; to the end, therefore, that the said defendants may true and perfect answer make to all and sigular the premises, as fully and particularly as if the same were herein again repeated and interrogated; and that the original deeds under which the defendant Selden claims title to the estate aforesaid, may be produced and declared null and void, and that *that* portion of the said estate, now held by the defendant Selden, may be divided among your complainants, according to their respective interests therein, and that the said defendant, Selden, may account for the rents and profits of the said estate, and that the same may be paid over to your said complainants, and that your honorable court may make such other order and decree upon the case, as the circumstances may require, or shall seem con-

sistent with equity and good conscience; may it please the court to grant to your complainants the Commonwealth's most gracious writ of subpœna, &c.

ROBERT PAGE,
HENRY ST. GEO. TUCKER,
JOHN HOPKINS, Jr.
Counsel for Compl'ts.

"And at a Superior Court of Chancery, held in Winchester, on the 10th day of April, 1820, by consent of the parties by their counsel, it is ordered that the Surveyor of Loudon county do go upon the lands in controversy between the parties, on the day of next, if fair, if not, the next fair day, and survey and lay off the same, as either party may require, and return five fair plats and reports thereof to the court; and that one of the justices of the peace of the said county do then and there meet him and examine and take the depositon of such witnesses, as either party may produce, which are to be returned with such plats and reports; and the sheriff of the said county is to attend said survey, and remove force, if any shall be offered.

"And at rules held in the clerk's office, at the said Superior Court of Chancery, for the Winchester district, for the month of July, 1820, the defendant, Wilson C. Selden, appeared by counsel and put in his answer to the bill of the plaintiffs, to which the plt's by counsel replied generally, and thereupon commissions were awarded the parties to examine and take the depositions of their witnesses.

Wilson Cary Selden's answer.

"The separate answer of Wilson C. Selden to the bill of complaint exhibited against him and others, before the Honorable the Superior Court of Chancery, held at Winchester, Edward Swann, John Swann, Wilson C. Swann, Thomas Swann, William P. Swann, Robert P. Swann, John Mercer, and Mary his wife, William B. Page, and Roger Jones, and Mary Ann, his wife. This defendant, reserving to himself the benefit of exception to the many errors, imperfections, and untruths, in the compl'ts. bill contained, in answer to so much thereof as he is advised is material, he answers and says—That he admits the compl'ts, Edward, John, Wilson, Thomas and William Swann, and the compl't, Mary Mercer, to be the children of Thomas Swann and Jane Swann, his wife, formerly Jane Page, who was the daughter of Mann Page, formerly of North River, and of his wife, Mary Mason Selden; and he admits the said Wm. B. Page, and Mary Ann Jones, to be two of the children of Wm. B. Page, who was one of the sons of the said Mann Page, and Mary his wife; he admits the intermarriage of the said John Mercer, with the complainant, Mary Scott Swann, and of the said Roger Jones with the complainant, Mary Ann Page; he

admits that the said Mann Page and Mary, his wife, had issue, a son called John Page, and the said Jane Byrd, and William Page; that the said Mann made his last will and testament, and departed this life at some period between the 29th day of August and 3d day of December, 1778, and he believes the copy of the said will exhibited by the compl'ts to be truly made.

"He admits that the said Mann Page died, seised and possessed of a large real and personal estate: the personal estate consisting, amongst other things, of several hundred slaves, and altho' he was considerably indebted, yet this def't does verily believe he left an estate fully sufficient for the payment of his debts and legacies; and that if the said Jane B. Swann, or those who represent her, have never received payment of the legacy of two thousand pounds left her by her father, that the non-payment of it is properly attributed to the mal-adm'n. of the said estate by the ex'ors., and not to any deficit of assets left by her father.

"This def't. does not admit that at the time of the death of the said Jane and Wm. B. Page, or at any time previously thereto, she was fully apprised of the failure of the provision made by her deceased husband for the said Jane; on the contrary, he believes that she entertained expectations that the said legacy of two thousand pounds would at some future day be secured to her. He admits that she must have been apprised that the effect of the devise of the Loudon lands, to the said William, was to depend entirely upon her affirmance of it, as the title to that land was in her, having been inherited from her brother. He admits it to have been her intention to provide for the said William out of the Loudon lands, but believes she considered the said Jane sufficiently provided for, under her father's will. But until he derived the information from the compl'ts bill, this deft. never heard or understood that she had ever conveyed, or intended to convey one half of her real estate to her son William B. Page, charged with the payment of £1500 to her daughter Jane. Nor does this deft. believe that she ever executed such a conveyance, or any other conveyance to her said son, containing such a charge.

If the active and communicative friends of the complts. have so long preserved this secret from them, it is not wonderful they should have heretofore withheld it from the def't. He admits that on the 12th day of December, 1782, he intermarried with the said Mary Mason Selden, who was first cousin of this defendant and widow of the said Mann Page, and that on or about the 6th day of March, 1783, he became guardian of the said John and Jane B. Page, two of her children, and that he also became guardian of the said Wm. B. Page, and gave bonds accordingly. He admits that he claimed and received the dower of his wife, (she having renounced her first husband's will) in the Gloucester estate devised to the said John, and took possession of the Loudon lands, which were the property of his wife, and that he also obtained possession

of the dower right of his wife in said slaves, for which he has duly accounted with the executor of the said Mann Page. He admits that he made various purchases of slaves, stock and furniture from the said executor, but he denies that they were in any respect unfairly made, nor does he admit that his possession of a personal estate, amply sufficient for a comfortable support, at the time of the death of his wife in 1787, arose from the said purchases charged by the complainants.

"His purchases of the slaves and stock were made at public sale at the Court house in the county of Gloucester, and in the county town of Loudon, at which the slaves were exhibited, and at which competition was invited by a reasonable previous notice; at which a large number of people attended, amongst them many bidders, and he is not aware of having been favoured with any advantage *with any advantage* over other competitors. The defendant admits that in the month of September, 1818, (after he understood that the title to an estate of which he had enjoyed possession for thirty-one years, was to be contested on certain supposed technical defects which was attributed to the deed of the 15th of September, 1787, herein after mentioned,) he did place on the records of the county court of Loudon a deed, from himself and his said wife, to his father Cary Selden, dated the 22d day of December, 1784, for the said tract of land in Loudon, with the exception therein stated, of which he believes the complainants exhibit No. 3 to be a correct copy. He avers that the said deed was fairly and deliberately executed by himself and his said wife, at the time it bears date, and that his father on the same day re-conveyed the said lands to him by a deed duly executed, of which a copy is herewith exhibited as a part of this answer marked No. 1, of all which he is ready to make proof; that these deeds not having been recorded within the time prescribed by law, this defendant had remained under the impression that they were void even between the parties, until he was otherwise advised by his counsel, a short time previously to their being put on record, as aforesaid—an arrangement of the property, confirmatory of the said conveyance, on the 22d day of December, 1784, but more precise and specific in its terms, having afterwards been carried into effect by the deeds of the 15th of September, 1787; and the defendant believing as he continues still to believe the latter to be complete and effectual, he thought little of the said conveyances of the 22 December, 1784, which remained among his papers seldom thought of, until his attention was called to them by the threatened attack of the complainants; but he avers that the said deeds were never cancelled or annulled, or intended to be cancelled or annulled by any of the parties to them; of the deed of Wm. B. Page therein referred to, as bearing date on the 22d March, 1784, and as recorded in the general court, he has little recollection. He believes it was in fact executed as it is recited to have been, and that it was then supposed to have been then recorded in the general

court; what has since become of that deed, at this distance of time, it is not possible for him to say; he has now no recollection how it was disposed of, nor was it thought of any essential importance after confirmatory deeds of the 15th of September, 1787.

This defendant does not believe or admit that the said deed to William B. Page contained any provision for his sister, the said Jane B. Swann. He does not admit that any conveyance of half of his real estate or any part thereof was made to the said Wm. B. Page, subject to the said charge of £1500 in favor of his sister, by your respondent's wife, before her intermarriage with your respondent, as the complainants have charged. And if such conveyance had been made previously to said marriage, he does not admit the complainants' conjectures as any proof that the same provision was continued in the deed of March, 1784, made two years after her marriage. But this defendant considers the said conjectural provision as a proper subject of litigation rather with the representatives of Wm. B. Page than with him, as under the said deed of 15th September, 1787, and the subsequent release of the said Wm. B. Page herein after mentioned, the title of the Loudon lands as between them is indisputably settled. This defendant admits that from the time of his marriage till the year 1787, he lived with his family in the county of *Gloster;* that in the year last mentioned he removed to Elizabeth City County, from which last, in the summer of 1787, he proceeded on a journey with his wife for his health, to Loudon County, from thence to Bath; that, from the latter place, they proceeded to the town of Winchester, where, in the month of September, that year, his said wife departed this life. He admits that whilst in the town of Winchester, during the illness of his wife, and a short time previously to her death, this defendant and his said wife did execute two deeds, one to Wm. B. Page, for two thousand acres of said Loudon land, described by certain metes and bounds, and one to Doctor Robert Mackay, for the residue of the tract; and that the said Robert Mackay and his wife conveyed to your respondent that part which had thus been recently conveyed to him. The technical defect supposed to appear on the face of the said deeds from the defendant and his wife, and supposed to arise from her privy examination, being taken by justices of Frederick, and not of Elizabeth City County, this defendant submits with confidence to the decision of the proper tribunal. He is advised that the proceeding is warranted by the spirit and sound construction of the law, has been sanctioned by the opinions of the most eminent counsel in Virginia, and by the practice of the people, commencing with the first act by which privy examinations of married women to conveyances by them executed, was allowed to be taken before justices of the peace, and continued down to this day; and if another construction were now adopted, this defendant believes that the most extensive and destructive confusion in titles would be the consequence.

"This supposed defect was well known to the said Thomas Swann, with whom the said Jane intermarried in the year 1795, a man skilled and experienced in legal questions, and was also known to the said Wm. B. Page, and was not considered by them as of any importance, if their opinions are to be estimated by their long acquiescence in this defendant's title. The said Thomas Swann, at the time of his marriage, resided in Leesburgh, in the County of Loudon, was then a practitioner of law in said County, and has continued his practice there ever since; and the said Wm. B. Page, for many years before his death, resided in the adjoining County, and was frequently in Loudon.

"This defendant cannot, without a feeling of indignation and regret, notice the insinuations thrown out against himself and all those who were concerned in the execution of the deeds of September, 1787; this 'unaccountable and unnatural act,' as the complainants have thought proper to call it, is stated by them, 'to have produced so strong an excitement at the time, as to render it necessary for this defendant to do something to appease the feelings of those who were about the person of his wife, at the time of her death.' It must therefore, if true, have been a matter of notoriety, and could not have escaped the knowledge of the family and friends of the helpless and unprotected orphan this defendant is represented to have left. Mark the sequel. In less than eight years, a lawyer of eminence and diligenc married this orphan—he was himself possessed of no estate, except the income of a practice, at that time, not very extensive. He had previously formed an intimate acquaintance with this defendant—was on terms of friendship with him; that intimacy and friendship continued, and apparently increased; he made and continued to make the house of this defendant his home, during has attendance on court, and whilst engaged in the management of his farm in Loudon, not only until the death of his wife, but until a few months before the institution of this suit, the injured orphan was brought up and educated by this defendant, and from the time of her marriage spent a part of almost every year under his roof; two of his children were named after this defendant, one of whom died in infancy. During the whole of this period, no charge or insinuation against the conduct of this defendant was ever made by the said Swann or his wife, nor had this defendant any reason to believe that either of them was dissatisfied with him. If the said Thomas Swann had believed that this defendant had defrauded his wife, is it credible that he would have pursued such a course? that he would have held out to the world as one of his most respected and intimate friends, the instigator of a most infamous fraud, the pillager of his wife and children; that he would have allowed a period of thirty-one years to elapse, and most of those to whom the transaction was known to be gathered to their fathers, before he took any steps to do justice to his family, and expose their oppressor? If this defendant had meditated a fraud, is

it possible that he would have had recourse to the agents who appear in the transaction; to Dr. Robert Mackay, the physician who attended his wife, and who was best acquainted with her state of health, both as to mind and body; to Alexander White, and to General John Smith, men of the most indisputable integrity and honor; to James G. Dowdall and David Kennedy, whose characters for probity and morality have never been questioned; of these five persons, and Battaile Muse, who witnessed the deeds as to this defendant, only Gen. John Smith was alive at the time this suit was instituted. Bush and his wife, at whose house this defendant and his wife resided at the time the deeds were executed, were both also dead. If the husband of the said Jane B. Page, and the father of most of the complainants, ever did believe in the charges now preferred, he has been guilty of the most unpardonable neglect of the duties of a husband and a father, of having deferred the inquiry to this day, or he must have supposed that the transaction would not have shown so favorably to him under the strong light which might have been thrown on it at an early hour, and that it would appear more terrific to his adversary in the obscurity of twilight and darkness. In addition to this, this defendant thinks it proper to state, that early in the year, 1794, the said William B. Page, who was then of age, being dissatisfied with the provision made for him by the said deed of September, 1787, claimed redress of this defendant—this defendant has no doubt that if any tales were in circulation to his disadvantage, they were thoroughly investigated by said Page, and that on this investigation they were abandoned. The dispute as to the equality of partition was by him and this defendant submitted to arbitration, and an award was made, that the defendant should pay him one thousand pounds in full satisfaction for any difference, as well as to quantity as quality."

"On the 12th day of July, in that year, the articles of agreement, of which a copy is herewith exhibited, marked No. 2, were entered into between them, the terms of which have been fully complied with by this defendant; and on the 23d of the same month a release of all claims against this defendant, as his guardian, was executed and delivered by the said Page, of which a copy is herewith exhibited, marked No 3. This defendant further states that on the 21 December, 1792, a general release was executed and delivered to him by John Page, the other son of the said Mann Page, a copy of which is hereto annexed, marked No. 5, and on the 9th day of May, 1796, the said Thomas Swann executed and delivered to the defendant a general release of all claims, and demands in law or equity, which he then had or ever had against this defendant in right of his wife, a copy of which is herewith exhibited, marked No. 4. All these releases were prepared by the said Thomas Swann, and subscribed by him, as party or witness. This defendant thinks it will be difficult to reconcile these instruments with a reserve of any secret right against him, and more particularly of a

right of such importance and amount. This defendant further says, that the said Thomas Swann has himself purchased and received conveyances from the defendant, for a considerable part of the very land to which his children now pretend; that this defendant's title is defective, and has been privy to sales made to other purchasers of other portions of the land by this defendant and Wm. B. Page, whose title under his mother's conveyance is on the same footing; and that he has never insinuated any defect of title, secret or apparent.

"On this occasion, this defendant may be permitted to add, that his treatment of his said wife was always kind and attentive; that he acquired her affection and esteem; that her determination to make provision for him was formed at an early period after their marriage, and deliberately persevered in to her last breath. This is evinced by the deed of December, 1784: it is evinced by a survey made by William Hough, since dead, by her orders during her residence in Loudon, when on her way to Bath, for the express and avowed purpose of separating the portion intended for her son from that intended for this defendant. It was evinced by many and repeated conversations with her friends, some few of whom yet survive, by whom this defendant will be able to prove it. He regrets that a distressing calamity has deprived him of the testimony of John T. Mason, one of his most distinguished and important witnesses. If he is not known to complainants, he was well known to their father. His statement as detailed in conversations with his nephew, John T. Mason, jr., is herewith exhibited, marked No. 6; the *reporter* and his high character for *vivacity* are also well known. This defendant is aware that this exhibit does not afford legal evidence, but it is notwithstanding of the highest credibility, and if the complainants, adhering to technicalities, think proper to reject it, it will not the less protect his reputation with the wise and good. The complainants proceed on the supposition that their grandmother was fully aware that her daughter was unprovided for, and that in consequence of the disposition of her property, she was to be turned upon the world helpless and unprotected; this is not true. By the will of Mann Page, an ample provision was made for his son John; a legacy of two thousand pounds and three slaves were left to his daughter Jane. Out of his wife's Loudon estate, his son William was to be established. The devise to John did not fail. William was to be provided for by his mother, and at the time of her death, she had a right to believe, and this defendant is satisfied she did believe that the legacy of £2,000 would be paid to her daughter. If it was not paid, it is to be imputed to the mal-administration of the executor, rather than to the failure of funds, as is more than insinuated in the plt's bill. These slaves devised to her were taken care of, two of them raised and supported, and all of them with their children delivered to her by this defendant.

"The treatment of this defendant, of his wife and of her daughter,

during her life, well warranted some confidence in him. How he had discharged this trust, he can safely appeal for a decision to all those who knew Mrs. Swann, to her education, her accomplishments, her filial attachments to him. He will not particularly advert to the pecuniary provision it is admitted he made for her, tho' in those days of comparative simplicity, it was not in Virginia thought contemptible. He denies there was any contract or agreement between his said wife and himself, by which he bound himself to provide for her daughter; he denies that any of the said conveyances, executed by his said wife, *was* procured by any such contract on his part, or were induced by any promise to that effect. He admits that for some time before the execution of said deeds, he had determined to make provision for her, and that he frequently expressed such determination, as well at that time as before and after; but this intended provision was not deferred, and was on the part of this defendant entirely voluntary, and was not the subject of any contract, obligatory in law or equity, and he believes that he has faithfully discharged his promise. In respect to the difference in quality in the land conveyed to the said William B. Page, and that conveyed to this defendant, which is no further pertinent to the present inquiry than as it may be considered as an evidence of imposition, he states in reply, that it is true, that the soil of his portion had been originally better, but it had been worn out and nearly exhausted by cultivation, and cleared of its wood, and that the present superiority of this defendant's part is the result of a better system of cultivation, and it's better adapted to the use of plaster, which latter advantage may properly be considered a gratuitous circumstance, as that mode of cultivation had not, in 1787, been introduced into the country.

"This defendant denies that his said wife was ignorant of the contents and effects of the said deeds to Robert Mackay and the said Wm. B. Page—he believes she was fully informed of both, and that they were explained to her by the magistrates who received her acknowledgement. He denies that her health, either of mind or body, was such as to render her incompetent to act in such an occasion—one too on which, in the enjoyment of full health, she had deliberately reflected, and determined on the course she was to pursue. He denies that any undue influence was used by him to procure the said conveyance. As the legal or equitable operation of the deeds to Doctor Mackay, and from him to this defendant, he submits it to the court to decide. He will only remark, that the former in its legal operation, as he is advised, transfers the whole estate therein described, to the said Doctor Mackay, and cannot in a court of law be impeached—and that in the same manner the deed from the latter to him transferred the legal title. That the purpose for which the conveyance was made, have been fully and fairly executed by the parties, and he submits to the competent tribunal the decision of the question: whether legal deeds carried

legally and equitably into effect, according to the intention of the parties, can be equitably set aside by persons claiming as volunteers under one of the parties. He admits that the said Jane Page was under age when she married the said Thomas Swann, and admits the ages of their children as charged. He admits the will and decease of John Page, and the death of William Byrd Page in 1812, and that he left the children named in the bill. He admits the benevolent proposal, and his reply to it, contained in complainant's exhibits, No. 6 and 7. But he denies all fraud, combination and concealment, and prays to be hence dismissed, with his costs of suit in this behalf most unreasonably expended.

"FREDERICK COUNTY, *to wit:*

This day, Wilson C. Selden made oath before me, a justice of the peace, in and for the county aforesaid, that his foregoing answer contains the truth, and nothing but the truth, to the best of his knowledge and belief. Given under my hand, this 14th day of June, 1820. JOSEPH GAMBLE."

"And at a superior court of chancery, held in Winchester on the day of November, 1820, on motion of the plaintiffs by their counsel, and for good cause shown, they are permitted to amend their bill, paying all costs occasioned by such amendment.

"And at rules held in the Clerk's office of the court aforesaid, for the month of July, 1821, the plaintiffs by their counsel filed their amended bill, which is the following words and figures, to wit:

Amended Bill.

"To the Honorable Dabney Carr, Esqr., Judge of the Superior Court of Chancery holden at Winchester:

"Respectfully complaining, show unto your honor, your orators and oratrices, Edward Swann, John Swann, Wilson C. Swann, Thos. Swann William P. Swann, which said John, Wilson, Thomas and William sue by Edward Swann, their next friend; also John Mercer and Mary his wife; William B. Page, and Roger Jones and Mary Ann, his wife, by way of amendment to their original bill, filed in your court of chancery aforesaid; that in the said original bill, your complainants have omitted to state what they now charge to be the fact, that the conveyance, as it is called by the defendant, from Doctor Mackay to Doctor Selden, the defendant, was not made until after the death of Mrs. Selden, the grandmother of part of your complainants, and the complainants call upon the said defendant to answer specially to that fact, and to produce the said deed for the inspection of the court; and your complainants relying upon this fact, charge that the said Robert Mackay was not bound to con-

vey the said property to the said Selden. That if the said Selden had filed his bill against the said Mackay, demanding a conveyance, he could not have set up in his favor any verbal declaration of trust in his behalf, made or alledged to have been made by the said decedent, his wife. And if so, that Doctor Mackay, who had the character of a trustee, could not effect or injure the rights of those for whom he was trustee—and your complainants also expressly charge, that Dr. Mackay did not pay one cent for the said lands so conveyed to him, by Mr. and Mrs. Selden; so *so* that according to the principles of equity, he held the same only as trustee. And the defendant is here called upon to say, whether Dr. Mackay did pay any consideration for the said property.

"And the complainants further expressly charge, that the said deed from Mr. and Mrs. Selden to Doctor Mackay was never read to her, or by her; and that although she might have intended to make a deed to Dr. Selden, charged with a provision for her daughter, and might therefore have signed the said deed under the impression that it was such as she intended; yet, they charge that she did not know the actual contents of the said deed, nor that it omitted a provision for her daughter, nor was the said deed ever read by the magistrates who took her privy examination, and explained to her as the law expressly requires. The said defendant, in his answer, does not pretend that she ever read the deed, but rests upon the supposed fact of the magistrates having done so, and explained it. But this was not a fact, nor do the magistrates certify that they explained the deed. And your complainants further show, that by the act of 1785, ch. 62; revisal of 1792, ch. 90, sec. 7; it is expressly provided and declared, that where no record is made of the privy examination of the wife, a deed shall not be binding on the feme, or her heirs; and they expressly charge, that the deed from Selden and wife, to Selden, dated December 22nd, 1784, and referred to in the defendant's answer, if it was ever executed at all, which the complainants by no means admit, was never recorded till the year 1818. And that the privy examination of Mrs. Selden, was never recorded either within eight months after the date, or during the life of Mrs. Selden, nor has that and her privy examination ever yet been recorded in the general court, from whence the commission purports to have been issued. And your complainants further submit, whether the object of the law was not to require a record during the life of the feme; so, that if by collusion or by force she had been compelled to sign a deed, those who would be interested in the act might have an opportunity of investigating it, and knowing the facts from herself. If so, then the deed is herein also defective, because the privy examination was not recorded till after her death—and the complainants call upon the defendants to *to* answer to this fact also, and to state if he can the precise date of Mrs. Selden's death. To the end, therefore, that the said Selden may be made def't. hereto, and may answer the premises on

oath particularly and not argumentatively, and that your complainants may have all proper relief, may it please the court to grant a subpœna, &c.

"And at rules held in the Clerk's office aforesaid, for the month of March, 1822, the subpœna awarded in this cause being returned executed on the defendant, Wilson C. Selden, and three months since filing the amended bill and the service of the subpœna having elapsed, and he still failing to file his answer, the amended bill of the plaintiffs is taken for confessed, and the court will proceed at a future day to decree the matter thereof, unless the said defendant, on or before the fifth day of the term next after he shall have been served with a copy of this order, show cause to the contrary. Upon a copy of the foregoing order filed, there is an affidavit endorsed in these words, to wit:

"FREDERICK COUNTY, *to wit:*

"Francis M. Beckwith this day made oath before me, a justice of the peace for said county, that on the 11th day of March, he delivered a copy of the within order to W. C. Selden, April 1, 1822.

JOHN BELL.

"And at a superior court of chancery held in Winchester, on the day of April, 1822, the defendant, Wilson C. Selden, having filed his answer to the amended bill of the plaintiffs; it is ordered that the conditional decree awarded against him, at rules holden in the clerk's office, be set aside. The said answer of Wilson C. Selden to the amended bill of complaint.

Answer to amended bill.

"The answer of Wilson C. Selden to the amended bill of complaint exhibited against him and others, before the honorable superior court of chancery at Winchester, by Edward Swann and others. The defendant saving to himself the benefit of exception to the many errors, imperfections and untruths in the complainants' bill contained, in answer to so much thereof as he is advised is material, answers and says *says* that, after so great a lapse of time, he cannot undertake positively to say whether the deed from Dr. Robert Mackay and wife to him was executed before or after the death of his said wife, but he verily believes that it was executed after her death. Whether the deed was or was not read to her by the magistrates who took her privy examination, this defendant cannot pretend to say. He is satisfied that, as honest and enlightened magistrates, they discharged their duties which the law imposed on them. And he is advised that after the lapse of time which has intervened, and under the circumstances detailed in his former answer, this court ought now to presume the same. This defendant's

attention having been by the amended bill of the complainants called to the inquiry, whether the deed was read to his said wife—he does recollect that the said deed from himself and his said wife, to the said Dr. Mackay, was read to her by the late Alexander White, by whom it was prepared in the presence of the said Mackay. He again repeats with entire confidence his assertion, that his deceased wife, at the time she executed the deed, was fully informed of and acquainted with its contents, and well knew its effects; and that she knew it contained no provision for her daughter, and that she executed it freely and voluntarily, and in pursuance of a determination deliberately made, and long entertained. He cannot undertake to say the precise day on which his said wife departed this life; he believes it to have been on or about the 17th day of September, 1787, and he admits that neither of the deeds referred to in the former answer, as executed by himself and his wife, were recorded until after her death. How the effect of a deed duly executed and delivered, and recorded within the time by law prescribed, can be impaired as to one of the grantors of a married woman, by her death intervening between her, the delivery and the time assigned by law for recording, is a problem of which the defendant cannot understand the solution. The argument urged by the complainants, if it have any force, will apply equally in favor of annulling a deed executed by a man or a feme sole, if the grantor die before recording. And this defendant cannot but admire the boldness with which the complainants *complainants* have attempted the interpolation of a new provision in the statute regulating conveyances.

"This defendants' simple and unsophisticated apprehension does not enable him to comprehend the argument made by the complainants to prove that the conveyance from Dr. Mackay to him, having been made after the death of his wife, was for that cause inoperative, and that the Dr. had not power to convey. That the legal title was transferred to Dr. Mackay by the deed of the 15th September, 1787, he is advised, admits of no doubt, and that the deed of the latter to this defendant transferred the legal title to him, he is told is equally clear. This legal title, he is advised, cannot in a court of law be controverted, and cannot be set aside in a court of chancery without impeaching it for fraud, or setting up and supporting a superior equity. He is advised that the complainants can have no claims which are not derived from their ancestor, this defendant's deceased wife, and he cannot conceive on what principles a court of chancery can interfere to set aside a family arrangement and settlement of estates fairly and deliberately made by persons competent to act, and accompanied by a legal title in favor of mere volunteers under one of them; whether Dr. Mackay could or could not have been compelled to convey to this defendant is now unimportant—he has conveyed. But this defendant is advised that, had the conveyance not been made by him, a

court of chancery would have enforced it against him on his acknowledgement of the trust, on which he has received his title, or on due proof being made that such trust had been created, and that one of the strongest grounds on which a court of chancery originally claimed, and was admitted to hold jurisdiction, was over trusts of this description. This defendant admits, as he has always admitted, that both of the deeds from himself and wife, and the deed from Dr. Mackay, were recorded after her death. He is advised that they have all been recorded according to law, and is ready to produce them when required by this court.

W. C. SELDEN.

"LOUDON COUNTY, *to wit:*

"This day Wilson C. Selden made oath before me, a justice of the peace for said county, that the contents of the foregoing answer are true, so far as they depend on his own knowledge, and that so far as they depend on the knowledge of others, he believes them to be true.

Given under my hand this 2nd day of April, 1822.

JOHN M'CORMICK.

"And at rules held in the clerk's office aforesaid, for the month of May, 1822, the plaintiffs replied generally to the foregoing answer, and commissions were awarded; the parties examine and take the depositions of their witnesses.

"And at rules held as aforesaid, for the month of December, 1822, this cause was set for hearing.

"And at a superior court of chancery held in Winchester, on the day of April, 1823, on the motion of the defendant, Wilson C. Selden, by his counsel, and for good cause shown, he is permitted to file a supplemental and amended answer, paying all costs occasioned thereby, which was thereupon filed. The said answer is in the words and figures, to wit:

Selden's supplemental answer.

"In the suit of Edward Swann and others, against Wilson C. Selden and others, depending before the superior court, the defendant Wilson C. Selden, by leave of the court, for supplemental answer to the complainant's bill, and in amendment to his answer heretofore filed, saith, that from the time of his marriage with Mary Mason, widow of Mann, in the complainants' bill named, until some time in the year 1784, he resided with his said wife in the county of Gloucester, in the State of Virginia; that in the year 1784, he removed with his wife and family to the county of Elizabeth city, and that he continued to reside with his wife and family in the said county of Elizabeth city, until some time in the year 1787, when

he proceeded with his wife on the journey in his former answer mentioned, and that on the 21st day of April, 1785, when the deed from himself and his said wife, to his father Cary Selden, dated on the 22d December, 1784, was acknowledged by his wife and her privy examination taken, he and his wife were residents of the county of Elizabeth city, dwelling therein, all which this defendant is ready to prove.

"This defendant further saith, that his former answer was drawn by his counsel, in Alexandria, from notes furnished by this defendant; that he has been informed by his said counsel, that the said answer, from the pressure of business, was drawn with great rapidity, and was handed to a scrivener to be copied, and, thus copied, was sent to this defendant. Whether the mistake, as to the time of his removal to Elizabeth City County, was committed in the original draught or the copy, this defendant cannot undertake to say; but he does solemnly aver that he was not aware of it at the time he made affidavit to the said answer, or at the time he filed it; that he first discovered the error on perusal of a copy of the answer obtained from the clerk of this Court, and, on enquiry, found that the original answer on file corresponded with the office copy. This defendant does positively aver that his removal to Elizabeth City County was not in 1787, as stated in his former answer, but was some time in the year 1784, which he is ready to prove.

"W. C. SELDEN."

"LOUDON COUNTY, *to wit.*

"This day, Wilson Cary Selden, above mentioned, made oath before me, the undersigned, a justice of the peace for said County, that the contents of the foregoing answer are true, so far as they depend upon his own knowledge, and that so far as they depend upon the knowledge of others, he believes them true. Given under my hand, this 24th day of April, in the year 1823.

"LUDWELL LEE."

"And at rules held as aforesaid, for the month of May, 1823, the *the* plts. replied generally to the supplemental and amended answer of the defendant, Wilson C. Selden, and commissions for the examination of their witnesses were thereupon awarded the parties.

"And at a Superior Court of Chancery, held at Winchester, on the 12 day of April, 1824, the Court doth appoint John S. Peyton, guardian ad litem, to defend the infant defendants in this suit, but he is not to be subject to any costs on that account.

"And at a Superior Court of Chancery, held in Winchester, on the 20th day of April, 1824, the Court being of opinion that this is a cause which it would be improper for the Judge of this Court to decide, doth order that the same be removed to the Superior Court of Chancery, holden at Fredericksburg.

"And at a Superior Court of Chancery, held in the town of Fredericksburg, on the 12th day of October, 1824, on the motion of the defendant, Wilson C. Selden, by counsel, the Court doth substitute John Stanard, Marshal of this Court, guardian ad litem, in the place of John S. Peyton.

"And at rules held in the clerk's office of the Superior Court of Chancery, for the Fredericksburg district, on the 18th day of January, 1825, the infant defendants, by their guardian ad litem, appeared and put in their answer to the bill of the plts., which answer is in the words and figures following, to wit:

Infants' answer.

"The answer of Charles H., Jane B., Mann B., John R., Richard B., Thomas S., Cary S., and Edward Page, infant children of William B. Page, decd., by John Stanard, their guardian ad litem, to a bill of complaint exhibited against them, and William C. Selden, originally in the Superior Court of Chancery, held at *Fredericksburg*, respondents making the usual and necessary reservations and exceptions for so much of said bill as they are advised it is material to answer, say that they have no personal knowledge of the matters set forth in the bill, and request that this be supported by proof. Respondents deny all fraud, and pray to be hence dismissed with their costs in this behalf expended.

"JOHN STANARD.

"Defendant, Wilson C. Selden, consents that the case be set down at once upon this answer.

"R. H. HENDERSON,
"*Attorney for W. C. Selden.*

"And at a Superior Court of Chancery, held in the town of Fredericksburg, on the 15th day of May, 1827, on the motion of the plaintiffs, by counsel, leave is given them to file an amended and supplemental bill; whereupon, they filed the same. The said bill is in these words and figures, to wit:

Second supplemental bill.

"To the honorable Wm. Brown, Judge of the Superior Court of Chancery for the District of Fredericksburg.

"Your orators, John Swann, William C. Swann, Thomas Swann, William P. Swann, Robert P. Swann, infants, under the age of twenty-one years, by John Mercer, their next friend, and the said John Mercer, in his own right, Mary Scott Mercer, his wife, William B. Page, and Roger Jones, and Mary Anne M., his wife, by way of further amendment and supplement to their bills now depending in this Court, against Wilson C. Selden and others, respectfully show that Mann Page, of Gloucester, their grandfather,

in and by his last will and testament, a copy of which is filed in this cause, bequeathed to his daughter, Jane Byrd, the mother of your orators and oratrices, John Swann and Wilson C. Swann, Thomas Swann, William P. Swann, Robert P. Swann, and Mary Scott Mercer, a legacy of £2000; that from the information which their father, Thomas Swann, had received, he was lead to believe that the estate of Mann, said Page, was insolvent, and, in consequence of that information, he had taken no steps to obtain payment of the said legacy, and not one cent of which ever was received either by him or his said wife, or your *or your* orators and oratrices; that the said Thomas Swann, their father, and your orators and oratrix for the first time learned from the answer of the defendant, Wilson C. Selden, to their original bill, that the estate of said Page was entirely solvent, and that sufficient assets came to the hands of his ex'or, to pay the said legacy, and that the legacy of their mother has been lost by the gross neglect of the said Wilson C. Selden, who acted as guardian of their said mother until her marriage; your orators and oratrices have understood that the said Wilson C. Selden is indebted to the estate of the said Mann Page, by bond, in the sum of about £700; whether the payment of this debt was withheld on account of the legacy aforesaid, they know not; if it was withheld on that account, the said Selden has hitherto concealed the fact, and never has accounted for any part of the said legacy. Your orators and oratrices, *is* the children of said Jane Byrd, further show that the right to the said leg*acies* hath been transferred to them by their said father, Thomas Swann, as appears by the exhibit filed in this cause. They further show that Edward Swann, one of the plts. in the original bill, is dead, intestate, and without issue, leaving your said orators and oratrix his only heirs; and that their father, the said Thomas Swann, has assigned to them the interest in said legacy derived by him from Edward, and that no adm'on. has been taken on his estate. Your orators and oratrix, William Byrd Page, Roger Jones, and Mary Anne M., his wife, further show, that the said Wilson C. Selden qualified as guardian of their father, William Byrd Page, deceased, soon after the intermarriage of the defendant with the mother of the said William Byrd, and acted as such until he became of age, which was some time in the year 1792; that a short time previous to the release executed by him to the said defendant, and relied on in his answer, the said William Byrd Page had received some vague information that his mother had executed to him a deed for an equal moiety of the tract of land in the original bill mentioned. Thereupon, he went into the neighborhood of her residence in the lower part of Virginia, where the deed was supposed to have been made, and made diligent inquiry, but was unable to obtain any evidence of the execution of any such deed; that the said defendant, Selden, withheld from him the information contained in the deed executed by the said Selden and wife, to Cary Selden, dated 22 December,

1784, and relied on by the defendant; nor was the existence of the said last mentioned deed known to the said William Byrd Page, in his life time, or to any of the parties interested, except the defendant, Selden, until the threats of the present suit induced him *him* to produce it and cause it to be recorded. Whereupon, they insist that neither the said William Byrd Page nor his representatives are bound by the compromise and release made by him and relied upon by the defendant. Your orators and oratrices therefore pray that the said Selden may answer the premises, and may be decreed to account with your orators and oratrices, the children of the said Jane Byrd, for the legacy aforesaid, that he may also account for the debt due by him to the estate of Mann Page, deceased, their grandfather, and that the said release may be annulled, and the relief prayed for in the original bill may not be impeded thereby.

J. SCOTT,
Counsel for the Pl'ts.

"And at rules held as aforesaid, for the month of March, 1828, the subpœna awarded in this cause to answer the amended and supplemental bill being returned executed on the defendant, Wilson C. Selden, and three months since the filing the bill and the service of the subpœna having elapsed, and he still failing to file his answer, the said bill of the plaintiffs is taken for confessed, and the court will proceed at a future day to decree the matter thereof, unless the said defendant, on or before the tenth day of the next term after he shall have been served with a copy of this order, shew cause to the contrary."

"Upon a copy of the foregoing order filed, an affidavit is made in these words, to wit:

"FREDERICK COUNTY, *to wit.*

"George W. Swann made oath before me, a justice of the peace in and for said County, that on the 9th day of June last, he delivered to Wilson C. Selden, a copy of the within decree nisi. Given under my hand, this 3d day of September, 1828.

"JOHN BELL.

"And at rules held as aforesaid, for the month of April, 1828, the defendant, Wilson C. Selden, appeared by counsel, and put in his answer to the amended and supplemental bill of the plaintiffs, to which the plaintiffs, by their counsel, replied generally.

"The said answer is in the words and figures following, to wit:

Selden's answer.

"The separate answer of Wilson C. Selden, to the additional amended and supplemental bill exhibited against him and others, in the Superior Court of Chancery, held at Fredericksburg, by John Swann and others.

"Respondent, making the usual and necessary reservations and exceptions, for answer to so much of said bill as he is advised it is material to answer, says, he again admits that Mann Page, the father of Mrs. Jane B. Swann, and of Wm. B. Page, bequeathed to his daughter the said Jane, £2,000. Respondent further answering, says, he believes the estate of said Mann Page, tho' embarrassed and injudiciously managed by the executor, was solvent, and that said £2,000 might have been recovered by the said Thomas Swann, husband of said Jane, had he chosen to make the exertion. Respondent denies positively that he ever led the said Thomas to believe that the said Mann Page's estate was insolvent, or made him any false or fraudulent representations touching it, and repels the charge with indignation. Said Thomas Swann intermarried with said Jane, in the year 1795. On the 9th day of May, 1796, said Thomas Swann, a young, active, well informed lawyer, received from this respondent, in full value, £640, executed the release appended to respondent's answer to the original bill. About the close of the year 1812, Mrs. Jane Swann departed this life. In the year , the claim being in the mean time assigned by said Thomas Swann to his children, this suit, in the face of a formal release, given a quarter of a century before, by an able lawyer, is brought against respondent by the children and assignees of his friend and confidential adviser for thirty years, to recover this £2,000. Respondent claims the full protection of the release of time and the circumstances of the subject, and respectfully trusts that, while the legal and equitable character of plaintiff's pretensions will be reprobated by the principles and rules of the court, it will not propitiate a very peculiar moral interest.

"Respondent admits that he made a purchase at the sale of the estate of Mann Page, decd., about the year 1788; insists that he long since discharged his debt, and utterly denies his liability to account at this day, altho' he cannot after so long a time explain and prove the manner of the payment. With respect to the claim of the representatives of Wm. B. Page, deceased, son of said Mann Page, respondent says that it is entirely untrue that said Wm. B. Page did not know the existence of the deed of the 22 December, 1784. On the contrary, he was well apprised of it, and had an eye to it in said compromise, was advised by his brother-in-law, Thomas Swann, and the said Swann himself had examined said deed. Respondent had accepted the deed given afterwards, under an impression that the delay to record the first impaired or destroyed its validity. Respondent relies upon the compromise and

the release given by said Wm. B. Page, as decisive of this question. This arrangement was made in good faith, in a spirit of liberal conciliation, for the promotion of family concord, and under the most respectable auspices. The said Wm. B. Page was moreover directed and counselled by said Thomas Swann. Respondent, while he reposed on those releases, and the great lapse of time consequent upon them, denies that he acted with culpable negligence in his character of guardian. He thinks he has a just right to complain of the disturbance of his old age, by a law suit founded upon stale and extinguished claims on the part of those who possessed his confidence for nearly thirty years, and during his best days, and who threw him off his guard by those social endearments which sought no secresy, and knew scarcely any limits; who once assiduously cultivated the friendship of him *of him* whom now they aim to cover with dishonor, and to plunge into poverty and ruin. Respondent denies all fraud and combination, and prays to be hence dismissed with his costs.

"W. C. SELDEN."

"LOUDON COUNTY, *to wit:*

This day Wilson C. Selden made oath before me, a justice of the peace for said County, that the contents of the foregoing answer are true. Given under my hand this 1st day of April, 1828.

"SAMUEL M. EDWARDS."

"And at a Superior Court of Chancery, held in the town of Fredericksburg, on the 15th day of May, 1828, on the motion of the plaintiffs by counsel, leave is given them to amend their bill. Whereupon they filed their amended bill. The said bill is in the words and figures following, to wit:

Amended Bill.

"To the honorable William Brown, judge of the Superior Court of Chancery, for the district of Fredericksburg. Your orators and oratrices, John Mercer, and Mary S., his wife, and John Swann, Wilson C. Swann, Thomas Swann, William P. Swann and Robert P. Swann, infants under the age of twenty-one years, by the said John Mercer their next friend, which said are children of Swann, deceased, respectfully show that heretofore your orators, and oratrix and others, filed a bill in this Court by way of amendment to their original bill, and heretofore filed by them against Wilson C. Selden, to which amended bill the said Selden hath filed his answer; that the said answer of the defendant is vague and unsatisfactory. They therefore pray that the said defendant may make further answer, touching the matters in the said

amended bill contained, and more especially, that he may set forth and discover the amount of the purchase made by him in the County of Gloucester, at the executor's sale of Mann Page's estate. Was it six or seven hundred pounds, or thereabouts? Were they made upon a credit, and how long? Did he give a bond or not, for the amount of said purchases, with security, and who was the security? Was payment of the debt ever demanded, and if it was, when and where, and by whom was it demanded? How has he paid the debt, was it paid in money or in what way? And if paid, when and where, and to whom was it paid? Has he not repeatedly said that there was an outstanding bond of his belonging to the estate of Mann Page, that had never been demanded of him? Has he never taken in that bond, or any bond given by him to the executor?

"The defendant in his answer to the said amended bill has stated, that Thomas Swann might have recovered the legacy now claimed after his marriage. The defendant is requested to state from what fund such payment could have been obtained; does he know of any assets out of which the said Swann could have obtained payment thereof? If he does he will be pleased to state them? Their nature, specific amount, and where they were to be found at the time of the marriage of the said Swann? If there were other assets, what has become of them, have they been wasted, and how and by whom; and that the complainants may have such relief in the premises as to the Court may seem equitable. May it please the Court to grant the writ of subpœna, &c.

"J. SCOTT, *for Pl'ts.*

"And at rules held as aforesaid, for the month of January, 1829, the defendant Selden, by counsel, put in his answer to the last amended and supplemental bill of the plaintiffs, to which answer the plaintiffs replied generally. The said answer and exhibits filed therewith, are in the following words and figures, to wit:

Selden's answer.

"The separate answer of Wilson C. Selden, to the last additional amended bill exhibited against him, in the suit depending in the Superior Court of Chancery held at Fredericksburg, by John Mercer, and Mary, his wife, and others, children of Jane B. Swann, deceased. Respondent, making the usual and necessary reservations and exceptions, for answer to so much of said bill as he is advised it is material to answer, says that he cannot better answer as to the means of making said £2000 bequeathed to Mrs. Swann, by her father, Mann Page, deceased, than by referring to this respondent's answerto the original bill filed in this cause. This respondent knows the estate of said Mann Page to have been large and valuable, tho' embarrassed as heretofore stated, and believes that the money

might have been made out of the executor or his securities. For the grounds of this belief he refers to his said former answer.

"Respondent can give no further information on this head: with respect to the purchase made at the sale of Mann Page's personal property by respondent, now upwards of forty years, respondent can hardly be supposed to have accurate recollection. He admits he did purchase to the amount of several hundred pounds, but the sum he cannot recollect with any certainty. He cannot now from mere memory say whether he gave a bond and security, or not. He has sought for old papers that might elucidate the matter and refresh his mind in regard to it, but can find none except the paper hereto annexed, marked P, prayed to be taken as part of this answer. From that it would appear he must have given a bond, as is usual at executor's sales, and that he must have paid part of the money in the year 1788. Respondent inclines to think Mr. John King was his security, but this he is not certain. Respondent has no recollection how, when, where or in what he paid the said debt, but he did pay the whole, and it must have been to said Mann Page's executor, or some one by him authorised. Respondent has no recollection of having said there was an outstanding bond of his belonging to the estate of Mann Page, that had never been demanded of him; certain it is, he has not said so of late years. From the previous part of this answer it will be seen, respondent cannot say whether he ever took in said bond or not; he knows he has long since paid the debt, but having been for so long a time entirely abstracted from the subject, and feeling no concern about it, as the parties had settled with him, and given him acquittances so many years since, he found it impossible to be more particular than he has been. Respondent denies all fraud and combination, and prays to be hence dismissed, &c.

"WILSON C. SELDEN.

"LOUDON COUNTY, *to wit:*

"This day Wilson C. Selden made oath before me, a justice of the peace for said County, that the contents of the foregoing answer are true to the best of his knowledge and belief. Given under my hand this 29th day of December, 1828.

"SAML. M. EDWARDS.

Exhibit P, part of Selden's Answer.

"16th May, 1788.

"Received of Mr. John King £45.5, for which you have cr. on your bond to me, as Mann Page's executor.

"JOHN PAGE.

"To Dr. Wilson Cary Selden, Hampton.

"And at rules held as aforesaid, for the month of August, 1829, this cause was set up for hearing on the supplemental and amended bills, on plaintiffs' motion by counsel.

"And at a Superior Court of Chancery, held in the town of Fredericksburg on the 16th day of October, 1830, Edward Swann, and John Swann, Wilson C. Swann, Thomas Swann, William P. Swann and Robert P. Swann, infants under the age of twenty-one years, by John Mercer their next friend, John Mercer and Mary S., his wife, the said John Mercer in his own right, William B. Page, and Roger Jones and Mary Ann M., his wife, plaintiffs, against Wilson C. Selden, and Charles H., Jane B., Mann R., Richard L., Thomas S., Cary S., and Edmonia L., infant children of Wm. B. Page, by John Stanard, assigned their guardian, defendants.

"This cause came on this day to be heard upon the original and amended bills, answers of the defendants and exhibits and examinations of witnesses, and was argued by counsel. On consideration whereof the Court is of opinion, that it hath no jurisdiction as to so much of the plaintiffs' bill as seeks relief on the ground of alledged legal defects in the deed from Selden and wife, to Robert Mackay, or for any defect in the deed of 1784 to Cary Selden, or the alledged want of validity of that deed, because it was not put on record until 1818; and as to the other claim of the plaintiffs, founded on a supposed resulting use in favour of the grantors under the deeds of 1784 and 1787; and as to so much of the claim of the said plaintiffs, as rests on alledged fraund in the obtention of those deeds or any others, or in the execution of the said deeds, the Court is of opinion that no use resulted to the said grantors, and that there is not sufficient evidence to establish any fraud, on the part of the defendant, Wilson C. Selden. And doth therefore adjudge, order and decree, that the bills of the plaintiffs be dismissed, and that they pay to the defendant, Wilson C. Selden, his costs by him about his defence in this behalf expended. But this decree is without any prejudice to any suit at law, which the plaintiffs may be advised to prosecute at law on account of alledged legal defects, or want of legal validity in the said deeds to transfer the title which the defendant asserts.

"From which decree the plaintiffs prayed an appeal, which is allowed to them upon their, or some person for them, entering into bond with good security to the defendants, in the clerk's office of this Court, in the penalty of four hundred dollars, with such condition as the law requires, during the present term.

"Whereupon the plaintiffs, John Mercer, and John Scott, his security, forthwith entered into and filed a bond, &c. &c.

"VIRGINIA.

"At a Court of Appeals held at the capitol in the city of Richmond on Monday, April the 17th, 1837, Edward Swann and John Swann, Wilson C. Swann, Thomas Swann, William P. Swann and

Robert P. Swann, infants under the age of twenty one-years, by John Mercer, their next friend, John Mercer and Mary S., his wife, the said John Mercer in his own right, William B. Page, and Roger Jones and Mary Ann M., his wife, appellants, against Mary Selden, widow, devisee and executrix of Wilson Cary Selden, deceased, and Wilson C., Cary Eliza, and John Selden, children and devisees of the said Wilson Cary Selden, deceased, by the said Mary Selden, their guardian ad litem, and Charles H., Jane B., Mann R., John R., Richard L., Thomas S., and Cary S. Page, infant children of Wm. B. Page, by John Stanard, assigned their guardian, and Ann Eliza, William P., and Edmonia Neilson, children and heirs of Edmonia L. Neilson, deceased, formerly Page, by Hall Neilson, their father and guardian ad litem, appellees.

"Upon a revived appeal from a decree forwarded by the Superior Court of Chancery, held in Fredericksburg on the sixteenth day of October, 1830, in a suit in which the appellants were plaintiffs, and the said Wilson Cary Selden, deceased, and others, were defendants.

"This day came the parties by their counsel, and the court having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, is of opinion that there is no error in the said decree; therefore it is decreed and ordered that the same be affirmed, and that the appellants do pay unto the appellees the costs about the defence in this behalf expended. Which is ordered to be certified to the Circuit Superior Court of Spotsylvania County.

"A Copy—Teste, J. ALLEN, *C. C.*"

"Appellees' costs in the Court of Appeals, $112,85."

24th. That the plaintiffs in the said suit in Chancery having appealed from the final decree aforesaid to the Supreme Court of Appeals in Virginia, where, after the death of the said Wilson Cary Selden, the defendant in this ejectment, and others, the proper representatives of the deceased, the said decree was affirmed by the final decree of the said Court of Appeals, pronounced on the 17 day of April, in the year 1837, and is now in full force. (The said decree of the Court of Appeals precedes immediately this article of the special verdict, and commences,

"VIRGINIA: At a Court of Appeals, &c.," and ends

"J. ALLEN, *Clk.*")

25th. That the said Cary Selden had been dead many years before the said deed from W. C. Selden and wife to him was acknowledged, and recorded as aforesaid.

26th. That the metes and bounds of the land of which the said deed from W. C. Selden and wife to W. B. Page purports to be a conveyance, contains by actual survey and admeasurement a frac-

tion over 1973 acres; and the residue of said land, whereof the said deed from W. C. Selden and wife to Robert Mackay purports to be a conveyance, contains by the like surveys and admeasurement a fraction over 2466 acres.

27th. That the said magistrates who took the privy examination of said M. M. Selden to said deed, from W. C. Selden and Mary Mason, his wife, to the said Robert Mackay, did not, nor did any of them at such privy examination read, or in any manner explain the said deed to her, nor did she at such privy examination read the said deed herself. That the lease, entry and ouster are such as in the plaintiff's declaration is alledged.

If upon the foregoing facts the Court shall be of opinion that the plaintiff is entitled to recover the land in the declaration mentioned, or any part thereof, then we find for the plaintiff his unexpired term in the land in the declaration mentioned, or such part thereof as the Court shall be of opinion that he is entitled to recover, and one cent damages; but if upon the facts aforesaid, the Court shall be of opinion that the plaintiff is not entitled to recover in this action the land aforesaid, or any part thereof, then we find for the defendant.

It is agreed that the following facts be added to the special verdict. That the said Thomas Swann, mentioned and described by that name in the will of John Page, as one of the children of his brother and sister, &c., was a son of the said Thomas Swann the elder, and Jane Byrd his wife, and died an infant under the age of twenty-one years, in the life time of his mother and after the death of the said John Page; and that Edward Swann, also in the said will mentioned, and described in said will as one of the children, &c., was also a son of said Thomas Swann the elder, and Jane Byrd his wife, and surviving his said mother, died of full age about the year 1825. We also agree the value of the land in controversy, exclusive of costs, is more than two thousand dollars.

C. JOHNSON, *for Deft.*
W. JONES, *for Pltff.*

And now at this day, to wit, on the day and date first herein above written, to wit:

At a Court of the United States for the fifth Circuit and Eastern District of Virginia, held at the City Hall in the city of Richmond, on Tuesday the 26th day of May, 1840, came again the parties by their attorneys, and thereupon the matters of law arising upon the special verdict heretofore rendered in this cause having been argued, it seems to the Court here, upon the whole matter therein contained, that the law is for the defendant. Therefore it is considered by the Court that the plaintiff take nothing by his bill, but for his false clamour be in mercy, &c., and that the defendant go thereof without day, and recover against the lessors of the plaintiff his costs by him about his defence in this behalf expended.

Memorandum.—On the trial of this cause the plaintiff, by his attorney, excepted to opinions of the Court given upon the said trial, and before the jury returned from the box to consider of their verdict, tendered his bill of exceptions, which was received, signed and sealed by the Court, and ordered to be made part of the record in the said cause. Which bill of exceptions is in the following words, to wit:

Mem. After the evidence on both sides had been given to the jury, tending to prove the several facts stated in the special verdict from No. 1 to No. 27, of the facts therein found by the jury, the plaintiffs offered the evidence of a competent witness to prove "that the said deed from W. C. Selden and Mary Mason, his wife, to Robert Mackay, was prepared, and the said commission for her privy examination was procured by the sole direction of said W. C. Selden, in consequence of his having, whilst his said wife lay ill as aforesaid, and shortly before her death, privately consulted the said R. Mackay, who was her attending Physician, as to the probable termination of her illness, saying he had a serious interest at stake depending on her life; and of his receiving an answer from said Mackay intimating immediate danger of a fatal termination of her case; whereupon the said W. C. Selden enquired for a lawyer, offering £100 for one who would effect the conveyance of a tract of land promised him by his said wife; that the said deed was thereupon prepared as aforesaid by an attorney employed by said W. C. Selden, and the said commission of privy examination was procured as aforesaid, for the purpose and object on his part of effecting such conveyance of the said land from his said wife to himself through the medium of said Mackay; that the said Mackay and wife did in fact execute their said deed to said W. C. Selden, without any pecuniary consideration paid or received, or intended to be paid or received therefor." To the admission of which evidence the defendant objected upon the following grounds:

1st. That as this evidence was offered with the intent that the jury should find the matters thereof as facts in the special verdict to be returned by them, the matters so found would be wholly irrelevant to the matter in issue in this cause.

2ndly. Because altho' the defendant by his counsel, is willing to concede that the aforesaid deed of bargain and sale from Wilson Cary Selden and Mary Mason, his wife, to Robert Mackay, was made with the understanding of all the parties thereto, that the said Robert Mackay would reconvey the same lands to the said Wilson Cary Selden for the same consideration which he, the said Mackay, gave for them, and in the manner in which he did in fact reconvey them to the said Wilson Cary Selden, by the aforesaid deed of the 17th September, 1787; yet it is not competent in this case for the plaintiff, with the view of impairing the validity of said deeds, to

set up a trust, inconsistent with the deeds, or to prove that the consideration therein acknowledged did not exist. And the Court, sustaining the objection, rejected the said evidence.

Whereupon the pltff. further offered the evidence of a competent witness to prove "That the said deed from said W. C. Selden and Mary Mason, his wife, to said R. Mackay, was prepared, and the said commission for her privy examination thereto annexed was procured by the sole direction of said W. C. Selden, for the declared purpose on his part of having the said land of his wife conveyed to himself through the medium of said Mackay; and that no pecuniary consideration was paid by said Mackay therefor, nor to the said Mackay for his conveyance to said W. C. Selden." To the admission of which the defendant objected upon the grounds above stated. And the Court, sustaining this objection, rejected the said evidence also.

Whereupon the plaintiff offered the evidence of a competent witness to prove "that the said deed from said W. C. Selden and Mary Mason, his wife, to said R. Mackay, was prepared, and the said commission for her privy examination thereto annexed was procured by the sole direction of said W. C. Selden, for the declared purpose on his part of having the said land of his wife conveyed to himself, through the medium of said Mackay; and that said Mackay and wife did, in fact, execute their said deed to W. C. Selden without any pecuniary consideration paid, or received, or intended to be paid or received therefor."

To the admission of which evidence the defendant in like manner objected, on the grounds above stated.

And the Court, sustaining this objection, rejected the said evidence also.

To which three several opinions of the Court the plaintiff by his counsel excepts, and his exceptions are signed and sealed and made part of this record.

P. P. BARBOUR, [L. S.]
P. V. DANIEL, [L. S.]

And upon the trial of the said cause the defendant, by his attorney, excepted to an opinion of the Court given upon the said trial, and before the jury retired from the box to consider of their verdict, tendered his bill of exceptions, which was received, signed and sealed by the Court, and ordered to be made part of the record in the said cause. Which bill of exceptions is in the following words, to wit:

Memorandum. On the trial of this cause, after satisfactory proof had been given to the jury establishing the various facts from No. 1 to No. 26 inclusive, set forth in the notes for a special verdict, prepared by Counsel, of Counsel in this case, and by like consent to be

made part of the record, the plaintiff by his Counsel propounded to the jury another matter, as a fact to be found by them, in the words following, viz:

27. That the said magistrates who took the privy examination of said Mary Mason Selden to the said deed from W. C. Selden and Mary Mason, his wife, to said Robert Mackay as aforesaid, did not, nor did any of them, at such privy examination, or at any time, read or in any manner explain the said deed to her, nor did she at such privy examination, or at any time, in presence of said magistrates or any of them, read the said deed herself; and as evidence to prove that fact, offered the deposition of John Smith, one of the magistrates, who certified the privy examination aforesaid; which deposition was taken and read in the suit in Chancery mentioned in the said notes for a special verdict. It was admitted that the said Smith, together with the other two magistrates, who certified the said privy examination, and all other persons present at the time when the said privy examination was taken, or having any knowledge of the facts attending it, if any such there were, are now dead. The deposition aforesaid is in the following words and figures, to wit:

"The deposition of General John Smith, taken the 12th day of Sept'r., 1820.

"The said John Smith being first sworn, deposeth and saith, that some time in the month of September, one thousand seven hundred and eighty-seven, he was informed that Dr. Selden and his lady had arrived in Winchester on their return from Bath; that Mrs. Selden was very ill, and Dr. Mackay called in to attend her. The day after hearing this, so well as this deponent recollects, Dr. Mackay called on him and mentioned that Dr. Selden had taken him aside and desired the candid opinion of him, Doctor Mackay, as to the state of Mrs. Selden's health, for that he, Dr. Selden, had a serious interest at stake depending on her life. If that be the case, replied Doctor Mackay, the sooner you begin the better, for I know not how long Mrs. Selden may live. A lawyer was then enquired for, with a declaration from Dr. Selden that he would give one hundred pounds to any gentleman who would effect the conveyance of a tract of land promised him by Mrs. Selden, but the deeds had not been executed; Mr. Alexander White was recommended and sent for, and proceeded to draw deeds from papers which Dr. Selden had with him; what those papers were I did not enquire. Mr. White, however, was at some loss as to the manner in which Mrs. Selden had obtained this property, when it was suggested by Doctor Mackay, that it was probable that this deponent might know something about it, and through Dr. Mackay he was desired to attend, and which he did. The information given by

this deponent amounted to no more than his having heard, when Mrs. Selden was married to her first husband, Mr. Mann Page, that she was an heiress, and inherited her property by the death of a brother, who received it by donation of an uncle, and that the records of Loudon Court would give the information desired. An express was sent off to the Clerk of Loudon Court for such papers as were deemed necessary. Mr. White, however, had drawn a deed, and requested this deponent to attend and take the privy examination of Mrs. Selden; this was objected to by this deponent, but urged as proper by Mr. White, alleging that the dedimus might be signed afterwards. This was agreed to under the avowal that a special report of the whole transaction must be made, if the dedimus did not come before the death of Mrs. Selden. Arrangements were accordingly made; Mr. James Dowdall and Col. David Kennedy sent for to attend with this deponent.

It struck this deponent, from the aspect of the transaction, and from what he had heard of the will of Mr. Mann Page, Mrs. Selden's first husband, that it was probable an investigation would take place in respect to Dr. Selden's title at a future day; he therefore determined to be very circumspect, and to impress upon his mind all that passed; nnder these reflections, he entered the chamber and kept a steady eye on Mrs. Selden as he approached the bed, who immediately spoke to him by name, when a short conversation took place upon common subjects purposely introduced by this deponent, to ascertain the state of Mrs. Selden's mind; being convinced that she was equal to understand the nature of the act which she was about to commit, a pillow was placed before, and a board or a book on that for her to sign the deeds. This being done, Doctor Selden left the room; Mrs. Selden was pillowed up in bed, and appeared to have much fever, but the deponent did not enquire what her complaint was; when the deeds were signed, this deponent asked the usual questions, that he had been accustomed to ask upon similar occasions, and was more particular than he ever was in forty-seven years' service as a magistrate, and was satisfied that she well understood the act she was about to commit. This deponent finally asked her, if it was her wish and desire that the deeds should be recorded, her answer was, it is my wish. The attendants chiefly retired; Mr. Dowdall remained with this deponent, when Mrs. Selden renewed a conversation unconnected with the execution of the deeds, but in a little time was taken with a puking, when this deponent left the room; when the magistrates returned below stairs, they found Dr. Selden, Dr. Mackay and Mr. White. The deeds were returned with these observations by this deponent: that he considered all that had been done of no avail, but if the dedimus arrived in time, that this deponent would attend at any moment; arrangements were made accordingly, and Mr. Dowdall promised to attend when called on. The following morning a little before

day, a messenger from the doctor informed this deponent, that the papers had arrived, and that the doctor desired his immediate attendance, and directed the servant to return and inform his master that I would follow without delay. This was accordingly done, and about ten minutes before sunrise, this deponent arrived at Mr. Bush's tavern, where Mrs. Selden lodged; no person was up about the house but Mr. Bush. Dr. Selden was enquired for, when he was said to be in bed; about sunrise or a little after, Dr. Selden came down; he appeared very much fatigued, but composed so as not to require precipitation; Mr. Dowdall and Colonel Kennedy were sent for, and some time after sunrise the magistrates were again introduced, *the magistrates were again introduced.* This deponent entered the room under previous impressions, and paid particular attention to the state of Mrs. Selden's mind; after a short conversation, he presented the deeds, she looked at them, when I told her they were the same she had previously signed, and asked whether she wished them to be recorded; her answer was yes. After some little further conversation, the magistrates left the room and returned the deeds after signing the dedimus; Mrs. Selden was pillowed up in bed at this last visit, perfectly calm and serene, but much altered in her appearance, so much so, that this deponent did not believe she would more than survive the day. This deponent then returned home, and in the evening again came to Winchester, in order to inquire after Mrs. Selden's health; that if she was dead he would offer his services to pay respect to her remains. This deponent met with Dr. Mackay, between three and four o'clock as well as he recollects, and was informed by the doctor, that he had just heard that Mrs. Selden was dead, and upon enquiry this proved to be a fact.

1st question by compl'ts counsel. You have been as you were requested, particular in your statement; please to state whether the transaction made a strong impression on your mind so as to satisfy you, that the facts stated by you are snbstantially correct? Answer. I am satisfied in my own mind, that they are substantially correct; and that I impressed them strongly on my mind, and that my memory is remarkably tenacious.

2d. Did you read the deeds yourself, from Mr. and Mrs. Selden to Doctor Mackay? Answer. I did not read the deed; I considered that every thing had been previously settled between Mr. and Mrs. Selden.

3d. As you did not read the deed, can you say whether either of the other magistrates read it; did either of them say anything to Mrs. Selden but yourself? Answer. The deed was not read in my presence by either of the magistrates, nor did either of them say a word, excepting myself; Col. Dowdall stood close by me, and was very attentive to all that passed.

4. Do you know that Mrs. Selden read the deed, did she read it in your presence, or was it read by any one to her? Answer. She

did not read it in my presence, but appeared fully to understand the act which she was about to commit. Question by same: Did you inform her what portion of her land was conveyed by this deed, and what part of the tract it was? Answer. I did not, but was satisfied in my own mind, that she understood the purport of the act which she was about to commit, or I would not have had anything to say to it. Question by same: When Mr. White advised you that the privy examination of Mrs. Selden might be taken before the dedimus came, and requested you to go on and take the examination, was Dr. Selden present, and did he also request it to be taken before the commission came? Answer. Dr. Selden was present, but I do not recollect that he said a word, but from his demeanor, I concluded he wished it. Question by same: Do you know whether Dr. Mackay had consented that *that* the said deed should be made to him? Answer. I do not know, from information from the Doctor, that he had consented, but he was very active on the occasion, and I afterwards saw the deeds delivered and re-delivered between the two Doctors. Question by same: When did the delivery and re-delivery take place? Answer. I think they were at different times; the deed to Dr. Mackay immediately after execution; the deed from Dr. Mackay I know was executed and delivered after Mrs. Selden's death. Question by same: Did you understand at the time of the execution of the deeds, that Dr. Selden had promised to provide for his wife's daughter? Answer. I did not, but heard it so stated a few days afterwards as a report; it was so stated by some of those with whom I associated; I never enquired into its truth. Question by same: You have said casually, you expected the matter would be brought into investigation, why did you suppose so? My reasons were, that I knew from report, and had often heard it mentioned, that Mr. Mann Page had left this land to his son William, and that Mrs. Selden had broke the will; and as I knew Mr. William Page to be a minor, and the transaction to have been done in a hasty manner, and in all probability different statements would be made, I therefore concluded, when he came of age, that he would probe the thing to the bottom. Question by the same: At what time did the messenger start for the dedimus, and when did he return? He was sent off in the morning of the day before Mrs. Selden died, and returned the next morning before day-light; it was to Leesburg, supposed to be forty miles. Question by same: Was Alexander White a married man, and had he any children? Answer. He had no children that I know of, but I have heard him accused of having one, and I believe very falsely. Question by same: At what time of the day was it that you *was* applied to for information, to enable Mr. White to draw the deeds, and how long after that was it, that you were first requested to take the privy examination? Answer. It was after breakfast, to the best of my recollection, and between eleven and twelve o'clock, when we made the first examination. Question by same: What

do you mean by Mrs. Selden's appearing fully to understand the act she was about to commit; did she say anything to you about the manner in which she was disposing of her estate, what portion she was giving to her son, and what provision she was making for her daughter? In fact, did she say anything other than that she freely acknowledged the deed, and was willing it should be recorded? Answer. I have stated that I was particular in my questions to Mrs. Selden; I cannot say the precise words made use of, but I know she understood that she was about to bestow a portion of her land on Dr. Selden; as I answered before, I did expect and believe, that she knew what that portion was. Question by same: Upon the last privy examination, was she capable of clearly understanding the precise situation of the land in the said deed to Doctor Mackay, together with the courses and distances describing the land conveyed at the same time to her son William B. Page? Mrs. Selden was perfectly serene and composed; I do suppose if she had not been previously acquainted with the courses and distances, that it would have required a great exertion of mind to have followed the description; I told her it was the same deed which she had previously signed; she looked at the signature, and when asked if she wished it recorded, she answered yes.

"The counsel for the defendant excepts to all that part of the foregoing deposition, which is hearsay, and also to all that part which is intended to falsify the certificate of the witness, as a justice of the peace executing the commission for the privy examination of Mrs. Selden.

"Question by defendant's counsel. Were you long and intimately acquainted with Doctor Robert Mackay? Answer. From my earliest manhood, and a more honorable man never lived. Question by same: Do you think from your knowledge of Doctor Mackay's character, that he would have consented to have been an instrument of fraud to any man? Answer. I have answered this in the foregoing, and repeat, I am convinced he would not. Question by same: Did Mrs. Selden discover any anxiety to have the deed executed and perfected? Answer. I thought she was as fully desirous to execute the deed as the Dr. to receive it, and this I mentioned when I delivered it. Question by same: Was not Dr. Selden a stranger to you, up to that period? Answer. I never spoke a word to him before this transaction.

"The complainants except to so much of the foregoing answers to the defendant's questions, as relate to the character of Doctor Mackay.

JOHN SMITH."

To the admission of this deposition, the defendant by his counsel objected, upon the grounds that, by the decree rendered in the suit aforesaid, and affirmed in the Court of Appeals, all question of fraud connected with the execution of the deeds on which the de-

fendant relies, and every other question connected with them, except their mere legal sufficiency to transfer the legal estate of the said Mary Mason Selden, had been adjudged and concluded; that the question, whether the deed in controversy had been explained to the said Mary Mason Selden by the magistrates, *nor* read to or by her as aforesaid, was irrelevant to the question whether her deed would pass the legal estate from her or not; and that the parol evidence contained in the said deposition, was incompetent in law to prove that the said deed was not so explained to her, or read. But the Court overruled the objection, and permitted the said deposition to be read to the Jury, to prove the fact propounded as aforesaid, without deciding or intimating an opinion on the question, whether the fact, if found, would have any influence on the question of title in issue between the parties.

To this opinion of the Court, the defendant by his counsel excepts, and his exceptions are signed and sealed, and made part of the Record.

P. P. BARBOUR, [SEAL.]
P. V. DANIEL. [SEAL.]

Mem.—The various facts from No. 1 to 27 inclusive, above referred to as being set forth in the notes for a special verdict, are the same set forth in the said special verdict, and therein numbered from No. 1 to 27 inclusive.

Teste:

HENRY GIBSON, *Clk.*

The United States of America, to Wilson Cary Selden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of the United States for the Eastern District of Virginia, wherein John Den, lessee of John Mercer and Mary Scott, his wife, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Philip P. Barbour, Associate Justice of the Supreme Court of the United States, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

P. P. BARBOUR.

On this day of in the year of our Lord one thousand eight hundred and personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to

I acknowledge service of the within citation, this 18th day of February, 1841.

JOHNSON, *Atto. for Wilson Cary Selden, Def't in Error.*

UNITED STATES OF AMERICA, *ss :*

The President of the United States, to the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Virginia, Greeting :

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between John Den, lessee of John Mercer and Mary Scott, his wife, plaintiff, and Wilson Cary Selden, defendant, a manifest error hath happened, to the great damage of the said John Den, lessee of John Mercer and Mary Scott, his wife, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held ; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

WM. THOS. CARROLL, [L. S.]
Clerk of the Supreme Court of the United States.

Allowed by P. P. BARBOUR.

Know all men by these presents, that we, are held and firmly bound unto Wilson Cary Selden in the full and just sum of three hundred dollars, to be paid to the said Wilson Cary Selden, his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of in the year of our Lord one thousand eight hundred and forty-one.

Whereas lately at a circuit court of the United States for the Eastern District of Virginia, in a suit depending in said court, between John Den, Lessee of John Mercer & Mary Scott, his wife, plaintiff, and Wilson Cary Selden, defendant, judgment was rendered against the said John Den, Lessee as aforesaid, and the said John Den, Lessee as aforesaid, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Wilson Cary Selden, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of January next:

Now the condition of the above obligation is such, that if the said John Den, Lessee of John Mercer and Mary Scott, his wife, shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JNO. MERCER, [L. S.]
THO. SWANN, [L. S.]
WILSON C. SWANN. [L. S.]

Sealed and delivered in presence of
A. NEWTON.
Approved by
P. P. BARBOUR.

I, Henry Gibson, clerk of the court of the United States for the fifth Circuit and Eastern District of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings in a certain action of ejectment, lately depending in the said court of the United States for the fifth Circuit and Eastern District of Virginia, between John Den, Lessee of John Mercer and Mary Scott, his wife, plaintiff, and Wilson Cary Selden, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand and annex [L. S.] the seal of the said court, this twenty-ninth day of January, 1841.

HENRY GIBSON, *Clk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, to wit:

I, Peter V. Daniel, Judge of the United States for the Eastern District of Virginia, do certify, that Henry Gibson, who hath given the preceding certificate, is clerk of the court of the United States for the fifth Circuit and Eastern District of Virginia; and that his said attestation is in due form.

Given under my hand, this 29th day of January, one thousand eight hundred and forty-one.

P. V. DANIEL.

Filed, 23d February, 1841.